

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 -----
4 UNITED STATES OF AMERICA,

5 -versus-

08-CR-77

6 LINDA O'CONNOR and DEAN SACCO.
7 -----

8 TRANSCRIPT OF JURY TRIAL

9 held in and for the United States District Court,
10 Northern District of New York, at the Federal Building and
11 Courthouse, 15 Henry Street, Binghamton, New York, on
12 WEDNESDAY, May 28, 2008, before the HON. THOMAS J. McAVOY,
13 Senior United States District Court Judge, PRESIDING.

14 APPEARANCES:

15 FOR THE GOVERNMENT:

16 UNITED STATES ATTORNEY'S OFFICE

17 BY: MIROSLAV LOVRIC, AUSA

18 Binghamton, New York

19 FOR THE DEFENDANT O'CONNOR:

20 FEDERAL PUBLIC DEFENDER'S OFFICE

21 BY: LISA PEEBLES, AFPD

22 Syracuse, New York

23 FOR THE DEFENDANT SACCO:

24 KELLY FISCHER, ESQ.

25 Binghamton, New York

1 (In open court)

2 MR. FISCHER: Judge, concerning the book and
3 the diaries, as I understand it, we're not going to give the
4 jury the book or the diaries. They have already been read
5 the portions or the entire documents in evidence.

6 THE COURT: Let's see. What are the numbers
7 and I can tell you?

8 MR. FISCHER: The diary is Exhibit 34, the
9 book is Exhibit 68.

10 THE COURT: Thirty-four is in subject to
11 redaction. Sixty-eight -- I think what we're going to do is
12 give them the excerpts that were read to the jury. I don't
13 think it would be proper to give them the rest.

14 MR. FISCHER: That was my understanding. I'm
15 all set, Judge.

16 (Jury present)

17 THE COURT: Morning, ladies and gentlemen.
18 Are you ready for some more?

19 Mr. Fischer, are you prepared to address the
20 jury?

21 MR. FISCHER: Yes, your Honor. Thank you.

22 THE COURT: All right.

23 MR. FISCHER: May it please the Court,
24 counsel. Good morning to everybody.

25 It's the first time I've ever had to try to

Summation - Mr. Fischer

2272

1 sleep in the middle of a closing. Didn't work. I'll try to
2 pick up. And, you know, I spent a long time, I spent an hour
3 and five minutes yesterday and I'm going to spend a good deal
4 more time with you today because of the importance of it, and
5 it is really important. I beg your indulgence while I go
6 through some of these things.

7 You know, we've talked about the stakes here.
8 Thirty years from now and 45 years from now this case may be
9 a memory, it may not for you. You may look back and say,
10 Dean Sacco, that sounds familiar. Linda O'Connor, I
11 remember. Oh, that was that trial I sat on for a month. But
12 for the people involved in this, for the people involved in
13 this, it's a life-affecting decision that will be reached
14 here. So it's important that we take our time. And I
15 suggest to you that when you go back to deliberate on your
16 own collectively as 12 jurors -- and, fortunately or
17 unfortunately, the alternates in this case probably will not
18 deliberate. Everybody, thank goodness, has survived
19 month-long testimony, and 12 of you will go back and
20 deliberate in this case. Take your time. It's worth taking
21 the time to analyze the proof in this case. And I ask you to
22 do that. As I had plenty of time to think, I came up with
23 lots more stuff to talk about. And in addition, some things
24 that I talked briefly about yesterday.

25 Something I want to go back -- first, I'm

1 taking it out of my own order. Mr. DiFiori, you know that
2 sticks because that's a direct statement that Mr. Sacco
3 inculpated himself. And I pointed out that Mr. DiFiori was
4 nervous, and I think that's clear. But why? Why? And I
5 suggest to you, when you're deciding this case, ask
6 yourselves why repeatedly. Why did this happen? Why did
7 this happen? To come up with the answers you need. One of
8 my favorites, *Twelve Angry Men*, it's an old movie with Henry
9 Fonda, where people were ready to convict except for one
10 fellow just said, why, why did this happen? Let's just
11 talk -- let's examine this bit of evidence. It's the way --
12 it's the right way to do it. To analyze, to break it down
13 into its component parts, see if they understand and support
14 at the end of day the structure, that is, they support the
15 guilty verdict beyond a reasonable doubt. If they don't,
16 there's only one result that you can have.

17 Mr. DiFiori, I don't know his background
18 beyond what he testified to here. He's from Argentina. I
19 don't know whether he's a green card resident at that time,
20 US citizenship, I don't know where he stands. He came up
21 through Florida. He came up to New York City. He's admitted
22 marijuana user, goes out to Los Angeles and California. He
23 got really nervous after he spoke to FBI. What is the
24 rational, reasonable conclusion to reach from all of this?
25 That he's just an innocent bystander trying to do the right

1 thing after he denied these things a number of times to the
2 FBI, to Mr. Haumann? I don't think that stands up. There's
3 something about that that is not square. And it is a
4 concern, and it's something you should ask about when you
5 speak amongst yourselves about this.

6 We live in a cynical, cynical age. As I
7 understood Mr. Lovric in his closing statement, everybody
8 lies. And therefore it's okay that Shannon O'Connor lied in
9 this case. That's what seems to be the rationale. That
10 seems to be the way that Mr. Lovric justifies Shannon
11 O'Connor lying to you. You know, I use confabulate. There's
12 a spectrum, range of motivations for what she said incorrect,
13 for things she said that proved not to be so. Some of them,
14 I can't remember a date, okay, fine. That's understandable.
15 Take, for example, though, while I was at the Greater
16 Binghamton Health Center, we planned -- it's called a riot in
17 some of the records. We planned an event, some of the other
18 kids, we planned an event where we were going to
19 intentionally deceive the members of the Greater Binghamton
20 Health Center all at once to create some ruckus. Maybe
21 that's a childish prank. Okay, fine. Take it for that. But
22 when we took that a step further, so are you saying that --
23 when I asked her, were you intentionally deceiving them and
24 you're telling this jury that you didn't deceive them? She
25 said, oh, I wouldn't, no. Basically, she said, no, I -- I'm

1 not lying about this, I'm not lying to anybody about
2 anything. I didn't state it very well, but I think it was
3 very clear what she was saying to you, she did not try to
4 deceive anybody about what occurred there. Now that is a lie
5 to cover up a misdeed, which is an intentional, deliberate
6 meditated lie. It sits at that end of the spectrum.

7 Mr. Lovric talked about she couldn't remember
8 dates. And that's true to a degree. However, some of the
9 dates we don't need a calendar date. They're markers. There
10 are events by which we measure our lives. We don't need a
11 specific time. June 14, 1967, whatever date you want to
12 pick. However, there are days like Thanksgiving. There are
13 days like my birthday. When I relate specific events
14 occurred on that day and I remember it for these reasons. On
15 Thanksgiving my mother made a Thanksgiving turkey dinner. We
16 sat down and Mr. Sacco sat there with me on Thanksgiving and
17 had Thanksgiving dinner with me. I was very uncomfortable, I
18 didn't like it at all. Is that correct? This is something
19 not just Miss O'Connor talked about. Mr. Lovric, in his
20 opening statement, I am going to prove to you on Thanksgiving
21 Day and her birthday, these horrific events occurred on those
22 days. Was he successful? Did he meet his burden of proving
23 that? Absolutely not.

24 What does the proof show you? We have some
25 phone records. What these phone records show is that on

1 November 23, 2006, Thanksgiving, the day one of these events
2 was supposed to have occurred, Mr. Sacco was using his
3 cellphone. Why did I call the T-Mobile gentleman to show
4 that Mr. Sacco could not use his cellphone in Norwich?

5 Now, December 27, there are some calls.
6 There's a call to Glenwood at one point, but there are also a
7 number of incoming calls throughout the course of the day
8 that Mr. Sacco receives on his cellphone. Now how did that
9 work? Mr. Lovric suggested, as I understand it, that you
10 know he could get service a mile or two out of town so if he
11 wanted to make some calls, he could go do that. However,
12 what about the incoming calls? How exactly would that work?
13 I'm going to have an incoming call, I'm going to drive two
14 miles out of town, I'm going to take my incoming call, I'm
15 going to drive back in, three or four, five times during the
16 course of the day? That is just nonsense. Doesn't make any
17 sense. It proves that Mr. Sacco was not in Norwich on
18 December 27, 2006. The story about the birthday is false.
19 Cannot be true based on independent evidence, not a
20 government witness, not a witness that's been prepped to the
21 nines and will say what I want them to say, on independent
22 documentary evidence.

23 Manipulation. We're manipulated every day by
24 advertisers on television, radio, billboards, magazines,
25 newspapers, all sorts of publications. People talking in our

1 ear, trying to convince us they are correct about something.
2 You know what, I am not exempt. I stand here as an advocate
3 I advocate on behalf of Mr. Sacco's position in this case. I
4 want you to agree with me. That's honest. Honest as can be.
5 It's our jobs. I'm a manipulator by profession. Mr. Lovric
6 wants you to believe what he says in this case. Miss Peebles
7 wants you to believe what she says in this case. It's what
8 we do. Is it accurate? You decide that. You sort among
9 what we said. It's not evidence. We just take certain bits
10 of evidence, I guess, and talk about that. But there's an
11 emotional, an emotional aspect to manipulation that should
12 not escape your attention in this case. The word, the words
13 "brutally raped" were used over a hundred times during the
14 course of opening and closing during this case. Why were
15 those specific words chosen and used, selected? Why? Ask
16 yourselves, why? Why were there stories about terrible
17 events, people drowning their children in bathtubs? Why?
18 What's the purpose of that? I submit to you, it is solely
19 for the purpose of emotional manipulation. To manipulate you
20 to be upset with Mr. Sacco.

21 The truth in this case lies somewhere outside
22 of that. What was the nature of the relationship between
23 Shannon O'Connor and Dean Sacco? Those two know. I don't
24 really think that anybody else knows. However, again, I go
25 back to those phone calls. You listen to the tenor of the

1 conversations, and it gives you an indication about what that
2 relationship was like. Listen to the substance of those
3 phone calls. The details, the personal details. That does
4 not come about by way of a relationship where there's great
5 fear and animosity, people. Do they talk about personal
6 details of their lives if they're terrified of each other or
7 one's terrified of the other? It is inconsistent. It is
8 inconceivable. It's not true. It's not accurate and it
9 can't be. There was some different relationship there.
10 There was a personal relationship that is not what Shannon
11 O'Connor said to you on the witness stand. She wanted you to
12 believe that she was fearful. She wanted you to believe that
13 Mr. Sacco made threats against her. She wanted you to
14 believe that Mr. Sacco used physical threats against her.
15 But those things are not supported by the evidence that she
16 created back in March of 2007, a year and two months ago, at
17 the time of the first disclosure. Historically they're
18 inaccurate. Historically you can work from that point
19 forward to find out where she got to the point from where
20 she's saying now, it's consistent, it's logical. Again, why?
21 Why? Why would she do such a thing?

22 Let me address the why's at the end of it.
23 Let's talk about some other evidence at the moment. Oh, the
24 doctor didn't testify. I addressed this yesterday. Why
25 didn't the doctor testify? Because if the doctor testified,

1 if he was an honest doctor, he would have to say not just
2 yes, there is evidence here of sexual assault, but if he knew
3 other facts upon which he based his opinion, he would
4 probably have to say, yes, it's also consistent with using a
5 vibrator. It's also consistent with masturbation. I don't
6 like talking about this stuff, I really don't. It's not my
7 way. But it is on the table and we need to talk about it.
8 Those are the facts. I'm sure if this doctor had testified
9 on this witness stand, he would have said those things, but
10 he wasn't produced, so it's speculation about what that
11 doctor would have said.

12 Oh, the birthday and Thanksgiving dates.
13 There are other things that are problematic about that. As I
14 understand it, Shannon O'Connor says that on her birthday she
15 goes upstairs and finds Mr. Sacco naked. Is that supported
16 by the evidence in the case aside from Shannon's testimony?
17 How about the other evidence? Does that support that claim?
18 No, it doesn't, I submit. The Pipers moved out end of
19 October or early November. Why? Because it was cold. There
20 was a problem with the heat in the place. The boiler system
21 was out. Mr. Pedersen, the plumber, didn't come in and
22 testify. And I introduced this document in a short
23 appearance that we had before the proof was closed and
24 outside your presence, but I want to point it out to you.
25 It's Exhibit Number S-31, Pedersen Plumbing record. Why is

1 that relevant? Who cares when the plumber was there? Page
2 2. Install new boiler supplied by owner. Is that
3 consistent? Absolutely. A boiler was delivered to Norwich
4 Meadows Farms. Mr. Sacco and -- or I don't know whether Mr.
5 Sacco or Clesson Lockwood moved it over to the house at some
6 point. It's consistent with the Pipers moving out because it
7 was cold upstairs. Fittings, material, labor, date
8 performed. 1/4, 1/8/07. After Christmas. You put the
9 little details out and you compare the big parts against the
10 little parts to see if things line up, and they don't in this
11 case. They don't line up. There was no heat upstairs that
12 Mr. Sacco was standing upstairs on December 27, when he
13 wasn't there anyway, naked, waiting. Doesn't make sense
14 ultimately. Doesn't fit. It's certainly not proof beyond a
15 reasonable doubt.

16 As I understood the prosecution's argument in
17 this case, Shannon O'Connor went on porn sites because she
18 was abused. Does everyone who goes on porn sites have a
19 history of being abused? Absolutely not. You've got a kid
20 here who is sexually aware, curious, on her own initiative
21 undertook, before August of 2006 and after 2006, on at least
22 three total occasions before and after, to go and find and
23 look at pornography. Does it flow that it occurred for a
24 particular reason or does it flow that this occurred
25 naturally becoming aware, a 13-year-old girl raised the way

1 that she was? The one does not flow from the other. Those
2 arguments are -- they assume too much. But Renee Lang's
3 daughter's house December '06, and Shannon says, I was there
4 because I was curious about pregnancy, I really wanted to
5 find out pregnancy. Mr. Lovric talked to you about Shannon
6 being on pregnancy sites at the Huizinga's house. What did
7 Mr. Lovric not mention about that event? That she was on gay
8 pornography sites. And what that has to do with pregnancy,
9 if you can figure that out, then you're doing better than I
10 am. That just doesn't make sense. That rationale for
11 accessing porn just doesn't fly. That excuse doesn't work.

12 Suggestibility. I suggested to you yesterday
13 that Shannon O'Connor was a very suggestible kid, and it's
14 true. A couple of examples. You had a transcript from the
15 videotape, if it's played -- and if you want to have it
16 played again, I believe you may well have an opportunity to
17 use the transcripts as well. I think that it's during those
18 interviews that the conversation between Detective Blenis
19 and -- actually, might be on the first tape where you don't
20 have a transcript, a conversation occurs between Detective
21 Blenis and Shannon O'Connor. Was there a tripod? No.
22 Something with three legs? Um, something you set the camera
23 up on. Oh, yeah. Oh, yeah, there was one of those. Where
24 did the tripod come from? Not from Shannon O'Connor. It
25 came from Detective Blenis. Was there ever any other

1 evidence in this case about a tripod being found, discovered,
2 used, ever? That was pure, pure, unadulterated suggestion.
3 When Shannon would make a disclosure throughout the records,
4 what she got was -- and there's a reason for it, and again,
5 I'm not suggesting that anybody told her to lie. But it's
6 inherent, unfortunately, in the way that this system operated
7 in this case, that this system steered her to the response
8 that the system wanted from her. I cite as an example, you
9 know, the "Good job." You know, Detective Blenis, if you
10 watch the tape, the taped interview with Shannon from
11 October 29, 2007, "Good job." You're telling the truth.
12 Even he assumed and, you know, what Liz Chesebro said, it
13 makes sense from the systemic perspective that they should
14 not really question if somebody makes a claim. That
15 rationale has a sensibility to it. But there's another side
16 to that coin, because now you're in a situation where, if a
17 12- or 13-year-old girl makes a claim and they do not
18 investigate it -- and fortunately for Kim Hamilton, Shannon
19 was confronted with overwhelming proof and confessed that
20 what she wrote up was false. But in this case, nobody really
21 questioned Shannon along the way. Miss Panus did question
22 Shannon at one point, September of '06, about the pornography
23 at the Huizinga's, and once Shannon was finally confronted
24 with the overwhelming evidence, what was her reaction? She
25 cried and admitted the truth. When she was confronted with

1 overwhelming evidence against the falsity against the
2 Hamiltons, what was her response? She cried and she admitted
3 the truth. Unfortunately, with respect to the allegations
4 that are on the table in this case, nobody confronted her
5 along the way about this until she was cross-examined.
6 Nobody said to her, what about this? But nobody said to her
7 on the tapes that were made in October of 2007 or December of
8 2007, gee, wait a minute, aside from what you're saying about
9 your mother, about Mr. Sacco you said this back then, but
10 you're not saying it now. Explain to us why. They didn't do
11 that. They said, oh, good job, you're telling the truth,
12 good job, keep up the good work. She was rewarded.

13 By the time she got here, it was too late to
14 recant. She knew what would happen if she recanted at this
15 point. Exactly what happened to her sister. And she had a
16 fear of being prosecuted that she talked about on
17 February 28, 2007 after her mother was arrested, and she was
18 with her mother, for walking out of the Pizza Hut. She was
19 afraid she would be arrested. A legitimate fear. She has a
20 legitimate fear today, I submit, of being arrested if she
21 recants based upon what her sister Mandy, I believe it is,
22 did and what happened to her. Shannon cannot recant.
23 She's -- she's boxed in irretrievably to this story and will
24 defend it forever in the face of whatever comes up against
25 it, and she's done that. And that defense of the

1 indefensible is a reflection on her credibility, and
2 credibility in this case I've been talking about -- it seems
3 like I've talked to it to death, but it is really the
4 foundation in this case. If you take Shannon O'Connor's
5 testimony, all of her statements and everything else away
6 from this case, what's left does not support this case. It
7 does not support the convictions here. Shannon O'Connor's
8 credibility is, in a word, terrible for cause, for whatever
9 cause it is. It is what it is. It is terrible. She does
10 not know the truth if it walked up and introduced itself to
11 her. She -- and I'm not saying that she's lying. You don't
12 need to lie to have bad credibility. She is confused.
13 There's no doubt about it. No doubt. She takes bits and
14 pieces from events and mixes them up and they come out in
15 some sort of story.

16 You know, I was thinking about this. I was
17 walking with my son last weekend in our -- down in the woods
18 out behind my house. And we have deer out there. My son
19 said, Daddy, there was a deer out in the backyard. I said,
20 yeah? He said, yeah, it was out in the treehouse. I said,
21 yeah, that makes sense. Yeah, and he started to walk up the
22 stairs to the treehouse. Oh, really? He said, yeah, and he
23 got up a couple stairs and he fell. Okay. He fell, he fell
24 on the other deer, he sat on him for a while, then they got
25 up and walked away. I said, okay. That's the type of thing.

Summation - Mr. Fischer

2285

1 It's innocent. He's not looking -- maybe he believes it. I
2 don't understand how the mind of a child works or adolescent
3 works, I really don't. It's been a long time since I've
4 been -- but what's consistent is that there can be
5 inconsistent confabulations here. Mistakes. Confusion. And
6 if there's a person who is prone to confusion, this girl is
7 the one.

8 You know, the last note from Liz Chesebro,
9 that May 3, 2008 note, where Shannon is allegedly involved in
10 some devil worship thing, Liz Chesebro noted basically that
11 Shannon was confused. Well, she was and she is. She's more
12 confused than most people. In fact, she's confused to the
13 point where she really is. She has a diagnosed mental
14 illness. I don't mean to make light of her condition, but it
15 affects her credibility. Again, not for the purpose of
16 saying that she's lying about it but whether you can believe
17 that what she says is accurate and whether you can believe
18 that what she says leaves no room for a reasonable doubt,
19 because that is the standard that must be met in this case.

20 Oh. You know, when she testified, she had
21 part of the entourage back here in the seats. Now I had my
22 back to them, I was watching her, but as I understand it, I
23 don't know, maybe you all saw it, maybe you didn't, that
24 there were signals going on. Think, think and slow down, and
25 a little coaching going on here. That's again -- it's

1 consistent with how things have been done with Shannon from
2 at least August 11, 2006 until today.

3 Again, I ask the question, why? Why the
4 disclosure on March 2, 2007? What happened? How do you
5 understand the why? What led up to that disclosure?
6 Timeline. Okay. As of March 2, Liz Chesebro has been
7 working closely with Shannon for about four months. About
8 seven or eight days before the disclosure, Linda is arrested
9 at Pizza Hut. Shannon is scared she's going to be arrested
10 too. Linda says she's very emotionally distraught.

11 2/28/07, Shannon dreams about mother and
12 Shannon stabbing each other.

13 2/28/06, Liz Chesebro discusses with someone
14 Ray's petition to have custody of Shannon. Now whether that
15 was expressly conveyed to Shannon or not, I suggest to you
16 that it didn't need to be verbally said, Ray is seeking
17 custody of you, he may not be your father, and by the way,
18 he's incarcerated for killing his girlfriend. That didn't
19 need to be conveyed verbally, but there are a lot of
20 intangibles that go on between people, not just words.

21 2/28/06, Shannon goes to the Hamiltons.

22 March 1, Shannon and Elizabeth Chesebro go to
23 the Family Court. Now apparently Shannon didn't go in, but
24 she went over there, as I understand it.

25 March 1, Liz Chesebro says Shannon O'Connor

1 expresses a fear of her mother.

2 March 1, a supervised visitation with her
3 mother. The week preceding the disclosure Shannon's studying
4 sex in school. The week before the disclosure Shannon sees a
5 condom on the bus. And this disclosure to Liz Chesebro
6 occurs on the way back, I guess it's from the supervised
7 visit or Family Court. I don't remember which it was.
8 That's a lot going on for a kid. For any kid, let alone a
9 kid that had gone through everything that she had been
10 through.

11 The reason that I point these things out is --
12 and again, it's my opinion. Take it, reject it. Take part
13 of it, reject most of it. Whatever you decide. But I submit
14 to you for your consideration the prospect that Shannon's
15 mental disability or emotional disability really did not come
16 about only in October, November, September of 2007. She
17 suffered under this. Her mother suffered under it for more
18 than three decades. Shannon had this condition before. All
19 of these stressors in her life created a response in her. It
20 was not diagnosed in March of 2007. I submit to you that
21 probably existed at that time and that there are elements of
22 confabulation that go into that March 2, 2007 disclosure,
23 that tenseness, that mixing stuff up and having it come up in
24 a certain type of story occurred at that time. No meds at
25 that time. I'm not sure, frankly, if the meds helped. I

1 don't know what they do. I know that Thorazine is an
2 antipsychotic medication, but I don't know what it does to
3 somebody. I don't know if it really helped her. Kim
4 Hamilton said the same thing: I don't know if they really
5 help her by giving her all these meds. But she was not
6 taking them on March 2, 2007, and I leave it to you to decide
7 whether there was some psychosis in Shannon O'Connor at that
8 time.

9 Suggestibility. I'm going to bounce back to
10 it for a second. April of 2007, Shannon says she has a
11 kidney stone and goes to the hospital and actually gets
12 Vicodin. Who had a kidney stone? Her mother had a kidney
13 stone in August of 2006 and went to the hospital and said, go
14 live with the Pipers. Suggestibility? Shannon seems to
15 incorporate events that come out in abnormal ways and her
16 response that a 13-year-old child has a kidney stone doesn't
17 make any sense at all. Nobody ever did, as I understand it,
18 but that was her conclusion. It affects her credibility. It
19 affects how she processes events and how she speaks about
20 them when they come out.

21 I was going to go through all of the things
22 that led up to these disclosures in October and December of
23 2007, but I'm not going to do that. The evidence is in front
24 of you. You're all aware of all the things that happened to
25 Shannon from March 2007 to December 5 of 2007 when these

1 statements were made.

2 Suffice it to say, there was a lot going on.
3 Substantial emotional events going on. And that Shannon
4 clearly did suffer from severe mental illness at the time.
5 My understanding of how that works and how it worked in this
6 case is, it's not ever-present. You're not always static.
7 You don't always remain in that same condition. It's not
8 like a steady grade up and steady grade back down with a
9 flue. It comes in waves. I mean, when she was at the
10 Greater Binghamton Health Center, she was able to complete
11 her studies, and not just complete her studies but excel.
12 She got great grades. She got 90s and 100s. Mr. Lovric
13 suggests that I want my cake and I eat it too with that, that
14 she can't be smart and mentally ill at the same time. But I
15 disagree with that conclusion. In fact, I believe they are
16 probably consistent. There has been a history replete with
17 very smart people having mental illness and people who have
18 accomplished tremendous things in the world having mental
19 illness. She was smart. There's no two ways around it.
20 I've cross-examined a lot of people in my day. I've taken a
21 lot of depositions. I've had an opportunity to ask a lot of
22 questions of a lot of people in my day. Shannon O'Connor is
23 a very bright kid. She's a very good witness. She was as
24 good at defending her position -- she was better at it than
25 most adults I've ever talked to. She was a bright kid. But

1 it's not inconsistent that she confabulated things and that
2 she was smart. The two can live comfortably together.

3 Shannon said she did not have access to the
4 upstairs. She testified under oath to that. She testified
5 under oath that she did not go into the shed. We proved --
6 we didn't prove, Miss Peebles proved unequivocally that
7 Shannon's testimony about going to the shed was false. Just
8 not true. Upstairs? Upstairs? Did Shannon have access to
9 the upstairs apartment when Mr. Sacco was not present?
10 Mr. Parmalee, government's witness, helps to answer that
11 question. Mr. Parmalee comes in, he doesn't remember whether
12 it is Thursday or Friday, but it's a school day, end of week.
13 Shannon hasn't been in school. Comes over about 4 PM and
14 says, is Shannon here? And Mr. Parmalee says, mom says she's
15 upstairs, go ahead, knock on the door. Mr. Parmalee goes,
16 knocks on the door. Shannon comes down, he says, as I recall
17 it, 15, 30 seconds. Took her that long. But she comes down
18 alone. Doesn't -- and he's not looking for but he doesn't
19 see any evidence that anybody else is upstairs.

20 Shannon, when she testifies, has a different
21 recollection of that event. Shannon's recollection is, her
22 mother came up, knocked on the door, said, you've got to get
23 ready, go down, Parmalees are here. Shannon got dressed,
24 came downstairs, Mr. Sacco came downstairs too, and Linda
25 came out on the porch. And Buddy the dog was out there

1 barking at everybody.

2 Can you reconcile those? No, you can't.

3 They're inconsistent. Who's telling the truth? Who has a
4 motivation to say that Mr. Sacco was or was not present?

5 Does Mr. Parmalee have any motivation in this case? Why
6 would he do that? He wouldn't. There is no motivation for
7 anyone else not to tell the truth. Is there motivation for
8 Shannon O'Connor? Absolutely. It exonerates, it absolves
9 her from any responsibility if Mr. Sacco was present. It

10 shows no, she could not have had access to the upstairs
11 apartment. I submit to you that that evidence leads to the
12 conclusion that Shannon did, in fact, have access to the
13 upstairs apartment when Mr. Sacco was not present, just like
14 she had access to Mr. Sacco's personal belongings in the
15 shed. The girl said it was the one next to the shed. Maybe
16 it was. I don't know. The testimony that we heard from
17 Mr. Lockwood was, everything got moved into the shed.

18 But Shannon was in the shed, and I submit to
19 you that she may well have been upstairs. In either event,
20 Shannon had access to Mr. Sacco's personal belongings. What
21 personal belongings did Shannon have access to? Pornographic
22 magazines? Yes. Tapes that were eventually found in the
23 storage unit 129. She also had access to Mr. Sacco's
24 writings. I don't know whether the book came from the
25 storage unit or not. I don't recall the testimony. But

1 Shannon had an interest in Mr. Sacco based upon his ways.
2 She had access to these things. She denied it, but she did.
3 That puts her in a position where she can say things that are
4 consistent with what Mr. Sacco wrote about.

5 Independent of -- independent of meeting with
6 FBI, independent reason why she would say things, she makes
7 the disclosure, August 11, concerning August 11, 2006, early
8 August 2006, but it's inconsistent historically. I submit to
9 you, those events did not occur August 11, 2006. She says in
10 her original March 2 disclosure, Detective Blenis' sworn
11 statement she signed with you that after August -- that
12 initial contact that there was no contact again until
13 November, Thanksgiving 2006. We have proved that that could
14 not have occurred on Thanksgiving.

15 She says, the next paragraph in that
16 March 7 -- March 2, 2007 statements: These events occurred
17 on my birthday, December 27, 2006. We have learned those
18 events could not have occurred at that time. She says in
19 that March 2, 2007 statement: I did not see Mr. Sacco in the
20 month of January. Now, January that she's talking about is
21 just two to three months before the disclosure.

22 February 10, 2007 is a date that I believe
23 Miss O'Connor talked about. YMCA records show that Miss
24 O'Connor, Shannon O'Connor and Mr. Sacco were at the YMCA
25 together on that date, not necessarily together. That's not

1 necessarily what the records show. They show they were at
2 the YMCA at approximately the same time, as I recall. There
3 was testimony about that time they had gone ice skating.
4 There was testimony that about that time they rode horses
5 together. That testimony again supports the position that
6 this was not a relationship based upon terror. It was closer
7 than that. That's consistent with those 14 and 15 telephone
8 calls. The March 2, 2007 statement is less than a month,
9 about three weeks after the February 10, 2007 date. If
10 there's any historical accuracy at all, you'll look to that
11 date, and that's difficult. That's a difficult date. But
12 the disclosure about that February 2007 date as it relates to
13 photographs, as it relates to pictures, as it relates to my
14 mother having sex with me on my birthday, don't come until
15 October and December of 2007.

16 The case really ultimately, as I see this
17 case, is a statutory rape case. The girl cannot consent.
18 She's not allowed to. The law does not permit that. Rightly
19 so. That's a state charge. Mr. Sacco was charged in the
20 state courts. He remains charged in the state courts. No
21 matter happens here, he has to go face whatever he faces. I
22 think Detective Blenis said two rape charges, a number of
23 other charges that are still pending in the state court in
24 Chenango County. And if you don't think that he has to go
25 face those things, I remind you of who was present when

Summation - Mr. Fischer

2294

1 Shannon O'Connor testified: Joseph McBride, prosecutor in
2 Chenango County. But that's where this case belongs.

3 Federal charges that you're sitting here to
4 decide have additional requirements. It raises the bar a
5 little higher. It has a requirement that there be interstate
6 commerce effect. As I understand Mr. Lovric's testimony,
7 basically anything that we do, if we take a breath of the air
8 that has traveled from New Jersey, then that becomes a
9 federal case. I submit to you, that is not a fair statement
10 of what is required, particularly with respect to Mr. Sacco.

11 Let me do this. Let me back away from the
12 charges because I'll address the law just before I finish. I
13 have a plan in place and I need to follow it. I want to stay
14 with Shannon's testimony and credibility for a moment.

15 The portion of the tape that Mr. Lovric played
16 for you about George Lang, if I heard that right, Shannon
17 says she was hurt because George and Shannon's mother were
18 having a relationship. Now, you go back, you listen to it.
19 Maybe my recollection is faulty, but that's the gist of what
20 I got from that; Shannon had a problem with that. Rightly
21 so, but maybe for the wrong reason.

22 I can't remember the fellow's name from
23 Norwich Meadows Farm who came to testify. Said Mr. Sacco
24 brought with him to dinner at his house his hopefully
25 bride-to-be Mary from Egypt. I don't know if Shannon was

1 jealous. I really don't know. I don't know the nature of
2 relationship. I can't say if she was or not. But it is not
3 beyond the realm of probability that she was. How does she
4 react when she has negative emotional feelings? One way that
5 she reacts is she becomes accusatory, apparently. That would
6 not be the first time that that has ever occurred. Did it
7 occur in this case? I'm asking you to ask that question and
8 to discuss that question among yourselves and come up with a
9 conclusion.

10 Shannon was seeking control in her life. Her
11 life was really out of control for a long time, apparently.
12 And it's -- we all strive for it. We all strive to make
13 sense of -- an anarchic world. Shannon did it in ways,
14 though, that were not within the norm. She says she tried to
15 commit suicide. Okay. Those are very emotionally charged
16 events. She says August 11, she took a shot of insulin
17 that -- from her mother's diabetic kit and took some Vicodin.
18 That, if true, is really tragic. But it's not true. The
19 record I believe Miss Peebles introduced from the hospital,
20 you can look at the record. One of the injuries -- doing
21 injury work, I can look at those records and understand what
22 they mean. Glucose is within normal limits; not high, not
23 low, within normal limits. If she injected -- normal,
24 healthy kid injected herself with insulin, her glucose limits
25 would not be within the normal limits. What she says

1 occurred did not occur.

2 September, she, at the Lang's house, tries
3 another suicide which, if true, would be as terrible as
4 anything can be. She injects herself with a syringe full of
5 Clorox and perfume. I'm not a toxicologist, but I do not
6 believe if one injected themselves with Clorox that they
7 would last very long, especially a hundred-pound 13- or
8 14-year-old. It would have some consequences that nobody
9 would forget. Did that happen? No. It did not.

10 I asked Elizabeth Chesebro about it because it
11 was in her notes. And this was the language that came out of
12 Liz Chesebro: She took a shot of Clorox and a shot of
13 perfume. I understood that to mean a shot like a shot glass
14 shot. And that just made her sick, right? And that's what I
15 asked Miss Chesebro. Maybe Miss Chesebro meant she injected
16 herself with Clorox. I do not believe that's what she
17 intended to mean. That's certainly what Shannon said to you.
18 A hospital record would have been made of that. I'm
19 absolutely certain you would have been made aware if that
20 hospital record had occurred. The conclusion clearly is,
21 what she says she did, she did not do.

22 September 19, 2007. She has a suicide attempt
23 at the Greater Binghamton Health Center. She takes a plastic
24 knife and seeks to -- she -- basically she admits to it.
25 What that created was -- and I think it's reflected in some

1 of the other records -- superficial scratches. It's a way of
2 reaching out. It's a way of asking for attention and trying
3 to gain control over one's life. But is it a legitimate
4 suicide attempt? No, it's not. But it is a way for her to
5 get control of her life, and it was desperate and it was
6 aberrational, but it has meaning in this case. It helps to
7 explain why.

8 November 2006, she takes a shoestring and
9 apparently puts it around her neck. I don't know if she was
10 wearing a hoodie or not. But she was able to rescue herself
11 when somebody knocks on the door. She's all alone. Nobody's
12 there to see what happened. Is that a legitimate attempt at
13 suicide or not? Because it's portrayed here as such. It's
14 portrayed here as a real, honest-to-goodness attempt. She
15 has this petechia condition where some marks, blood vessels
16 on her face were apparently broken. I don't know. I didn't
17 see the pictures. I don't know who was observing. That's
18 what Shannon said. But again, she's calling out, she's
19 looking for help, and she needs the help. She's in a bad
20 place at that point. But are those legitimate? Are they
21 real? I submit, no.

22 What do kids do for attention? This is --
23 this is not necessarily the oldest story ever told but it is
24 one of the older stories told. There's a gentleman who wrote
25 a book about it, Arthur Miller. In high school I had to read

1 The Crucible. I hated reading it. I thought, this is just
2 ridiculous, why do I have to read it. There's a reason why,
3 so I understand later on, when I walk around the world,
4 what's what. What's The Crucible tell us? The Crucible is
5 some story about girls who made accusations in 1700, 300
6 years ago or so, against some other people in the community
7 that were blatantly false, that they were witches, but it's a
8 story that goes beyond just that fact that there can be false
9 accusations. It's a story that talks about how society
10 reacts to them. And it's important. In that case society
11 reacted by believing, taking charge and getting ready to kill
12 people over those accusations. In this case society has
13 basically reacted in the identical manner, except they're not
14 going to be killed. There are stakes at issue, but they're
15 not going to be killed. The story is the same today as it
16 was 300 years ago. It has not changed a bit. Society, the
17 more we change, the more we stay the same. Our reaction to
18 those claims is exactly what it was then, and I'm glad that I
19 read that. It's important. And it's not just a story; it's
20 a principle. It's an observation about us and how we react
21 to these things.

22 I'd like to talk about the charges against
23 these defendants, the legal basis for these claims, these
24 allegations. Mr. Sacco is charged, as I understand it, in
25 counts two, three, four, six and seven. Count two, buying a

1 child for the purpose of producing pornography. Count three,
2 trafficking, child trafficking, rent for sex claim.

3 Let me talk about those two because they share
4 many of the same principles. Purpose is different; one for
5 having sex and one for producing pornography, as I understand
6 it. But they share the idea that there's a sale of a child
7 for one purpose. In this case that proof is really weak. It
8 came from where? It came from Shannon O'Connor about the
9 Best Western. You know, Mr. Lovric was up here for a few
10 hours yesterday talking to you in his closing, and he
11 probably spent about a minute talking about the Best Western
12 events because they aren't true. They are the purest
13 confabulation there is in this case. But where did that come
14 from? Lisa Florance-Diaz and Liz Chesebro had conversations.
15 They're documented in Liz Chesebro's records. Elizabeth
16 Chesebro said, I suspected this all along. Even if Shannon
17 doesn't admit it, I suspected it all along. Well, geez, if
18 there's a suggestion that I've ever heard, that's it. She
19 denied it. You know what, in that same note, Liz Chesebro
20 had to specifically say, I asked an open-ended question. It
21 was such a rarity, she had to make a note of it. And you
22 know what, the answer to it was no, it didn't happen, but it
23 comes out in the note that Shannon denied it, but we
24 suspected it all along that this occurred. She said it
25 didn't occur; we know she really means that it did occur.

Summation - Mr. Fischer

2300

1 That's really weak evidence.

2 The testimony from Shannon about the Best
3 Western comes in that December 5 video, at the height, I
4 submit, of the psychosis that she was operating under.
5 There's no substance to those claims at all. Convicting that
6 lady on that evidence is a crime. That's not acceptable.
7 That's not okay. That evidence does not rise beyond a
8 reasonable doubt. It doesn't rise to probable. It doesn't
9 rise to likely. It doesn't come off the ground.

10 The financial issues, I have here some of Mr.
11 Sacco's financial records. Miss O'Connor's financial records
12 are in. What I think you see is, Dean's getting paid for the
13 rent. He gets 800 bucks up front, three months. You find
14 additional payments of \$600, \$600. When she gets Section 8,
15 Section 8 apparently pays a portion of the rents. When she
16 comes up short, he is yelling and screaming to DSS, hey, man,
17 I'm not getting paid. I need to get paid.

18 Why is he yelling and screaming about not
19 getting paid? Because he has two mortgages, water bills,
20 insurance, NYSEG, his phone bills, rent at home. He needs
21 that money. He doesn't just need that money, Dean Sacco had
22 a dream of coming up here, having his own life in Norwich.
23 Wanted to change things around. That was threatened. The
24 claim is, as I understand it, he put all of that on the line
25 for two months' worth of partial rent payment. Look, he

1 lived in New Jersey. Elizabeth City. He's right near
2 New York. If somebody wanted sex for money, he could go in
3 the city and do that. He doesn't have to come up to Norwich.
4 He doesn't have to come up here and put everything on the
5 line, everything on the line. And you can see how hard he
6 worked to salvage this. He hired a bankruptcy lawyer to see
7 if he could salvage his house. He's writing letters from
8 jail trying to save the house. It's the most important thing
9 to the guy. Would he give that up for this rent for sex?
10 Would he give up any rent at all? No, he wouldn't. He
11 needed this money.

12 The charge is not supported by the evidence.
13 Even the financial evidence itself. Yes, Linda had money
14 trouble. Yes, she made bad judgment with money, she bought
15 dogs, etcetera. She did pay the rent. They went through
16 HUD, through DSS, and got the rent paid.

17 Count four, I believe it is production of
18 child pornography. The disclosures about cameras, first of
19 all, I submit to you, take a look at this bag. It's a black
20 bag. Can't put towels in it. It's not a YMCA bag. When
21 Shannon is questioned by Detective Blenis, did he have a
22 camera, where did he put it? He put it in a bag. Like a
23 YMCA bag that he'd go in the YMCA, put towels in it. What
24 color? Brown. Is it the same bag, I asked Shannon? She
25 said, no, it's not.

1 That claim, Mr. Lyons testified that there
2 were tapes found. I recall him saying 30 hours of tapes.
3 Maybe he didn't say that. There were sure a lot of tapes.
4 They were found in Mr. Sacco's stuff in the storage unit.
5 What did they come up with? What's the best the government
6 can produce out of all this searching, looking, finding, is
7 30 hours essentially of innocuous tapes, with one exception.
8 The tape that was played for you of Mary Carmen. If you have
9 any question about it, look at this picture, okay. And look
10 at that tape again if you need to, to figure out that it's
11 the same person. That's all they got. There is no
12 illegal -- there's no picture of Shannon found.

13 The government says Mr. Sacco apparently
14 secreted all the evidence, but he did not secrete the condom.
15 He did not secrete this camera. He did not secrete the 30
16 hours of videotape. Maybe he came up, 30 hours of video,
17 drove back down to New Jersey, videotaped himself speaking
18 Italian, drove back up to Norwich and put those there. I
19 don't think that happens. Those tapes found there were the
20 tapes that were there. He didn't come up to Norwich and hide
21 stuff.

22 What do those tapes show? Him talking with
23 some guys, talking about buying a camera to make pornography.
24 All right. And him taking a call looking for young models,
25 and I agree that's damning evidence. It's evidence of

1 intention. It's evidence of thought. But that's all it's
2 evidence of. And thought alone does not convict you of a
3 federal charge. We're not there yet. We have not yet
4 reached 1984. There must be some evidence of it. The idea
5 that, yes, if I considered videotaping somebody, that I'm
6 guilty of this crime, is not accurate. Did it happen is the
7 test. Did it happen is the question. And that question has
8 to be answered not just by a probability or it might have
9 been. That must be proved beyond a reasonable doubt.

10 Does the proof in this case rise to a beyond a
11 reasonable doubt? Absolutely not. The proof comes from --
12 the primary source, not the exclusive source, but the primary
13 source -- Shannon's October 29, 2007 disclosure. I submit to
14 you, you ought to look at that again. You ought to watch
15 her. Her affect is flat, which indicates that she's
16 medicated. She was, as I recall the testimony, October 1,
17 late October, November 1, receiving these Thorazine stat meds
18 that she called them. Auditory hallucinations, I don't know
19 whether they occurred before or after October 29, 2007, but
20 they occurred at around that time. At that time, there's no
21 doubt about it, she is hallucinating. I mean, that's the
22 word in those documents. I didn't make that word up. Can
23 you rely on that? Is that proof that supports a conviction
24 on these federal charges beyond a reasonable doubt? It can't
25 be. If that's sufficient, then the system has no value

1 whatsoever.

2 Count six. Did Mr. Sacco travel to Norwich
3 for the purpose of having sex with Shannon O'Connor? First
4 of all, I go back to August '06. Did it happen? Linda Panus
5 seemed like a diligent, responsible, straightforward
6 caseworker for DSS. She did investigate. She's the one who
7 challenged Shannon about, did these things occur at
8 Huizinga's house where Shannon said, yes, it did. She asks
9 Shannon, she goes through the good touch/bad touch, December
10 '06. She understands it. She specifically asks Shannon, did
11 this ever occur to you? And what does Shannon say? No.
12 That's historical evidence, not after the fact looking back,
13 "knowing what I know now, this is what I would have done"
14 evidence. Historical evidence says it didn't occur in
15 August.

16 With respect to that count, and I think that's
17 the strongest count the government has here, the interstate
18 commerce aspect of it is lacking. Yes, Mr. Sacco traveled
19 from New Jersey to New York. Was that the primary motivating
20 factor? Why did he travel up here? Well, he had a job. He
21 had the house. And, if you believe the government's case,
22 Shannon was up here. But was that what drove him up here?
23 Absolutely not. Was that what motivated him to get in the
24 car and drive up here? I submit to you again that if that's
25 what he was looking for, there were a thousand other places

Summation - Mr. Fischer

2305

1 within a hundred miles of him where he could have gone.
2 That's not why he came up here. He came up here to do the
3 plumbing work.

4 I looked through this financial record, S-27.
5 It shows a lot in a short document. New Jersey Department of
6 Personnel, looking for a job November 20, 2006. Norwich
7 Water, December 28, 2006. Norwich Water. Chase Home
8 Finance, December 28, 2006. Clerk application, December 7,
9 2006 to New Jersey. Chase Home Finance, 116.07. \$25 in cash
10 on January 19. Chase Home Finance again, January 26. Jay
11 Selenger, 2006, bankruptcy lawyer, down payment. Chase 678,
12 February mortgage. Another payment to Jay Selenger. NYSEG,
13 gas and electric. Ron Donahue, March 4, 2007 for -- for --
14 that's when that flooring work got done, by the way. Shannon
15 says these events occurred where the floors were sanded.
16 They did not occur back in October or November or December.
17 They occurred more recently than that. This is a March 4,
18 2007 payment. They occurred, if they occurred, in February
19 of 2007. Again, March 11, Norwich Water. March 11, Chase
20 Home Finance. March 10, Selenger. You have other records
21 here. Rising Sun.

22 Bottom line is, in my opinion -- it's just my
23 opinion -- the purpose for Mr. Sacco coming up, the main
24 purpose, primary purpose, the motivating factor for him to
25 come up here was to work on this house. Pretty clear. If

1 there was a relationship between Shannon O'Connor and Dean
2 Sacco, my understanding of what Judge McAvoy will tell you
3 about the rules in this regard, it goes something along these
4 lines: It may not just be incidental to the other purposes.
5 If the contact between Shannon O'Connor and Mr. Sacco is
6 incidental, that does not satisfy that interstate commerce
7 requirement. Was that contact incidental or was that the
8 reason why Mr. Sacco came to Norwich? That's the question
9 you'll need to wrestle with.

10 May 2005, Mr. Sacco puts his thousand-dollar
11 down payment on his house. Has tenants up there. Somebody
12 moves out downstairs, apparently. Pipers had been up there.
13 He does work. August 11, the tree guy did the work on or
14 before August 11, 2006.

15 Another reason, legitimate reason for
16 Elizabeth Dinunzio to testify was, she came up here -- she
17 came up here and said, this is what Dean intended to do and
18 this is what Dean did upstairs, the things that are not
19 reflected in this documentation. Tore out a bathroom or a
20 kitchen. I'm not sure which it was. Tore out carpets. I
21 think Clesson Lockwood talked about removing garbage, digging
22 out the basement, putting in a new heating system. These are
23 all other purposes.

24 Did he come up here in November of 2 -- I'm
25 sorry, May of 2005 to meet Shannon O'Connor? No. Meeting

Summation - Mr. Fischer

2307

1 Shannon O'Connor was purely coincidence. An incident to what
2 his primary job was up here, to take care of his house. To
3 make money. He wanted to make money. He wanted five jobs.
4 It was a coincidence in the dictionary definition of what
5 that is. The contact with Shannon O'Connor was an incident
6 to his primary purpose in coming up here, to work on the
7 house.

8 Oh, count seven, possession of child
9 pornography. As I understand the government's position on
10 closing, it's that Exhibit 40, the photographs, terrible
11 photographs from the Philippines or wherever they are, which
12 apparently were mailed up here from a guy in Louisiana. I
13 don't know much about that. But that's what it shows. The
14 government says you may look to those as a basis for a
15 finding of guilt in this case. Says it on the closing. But
16 I had the openings transcribed by the stenographer, and she
17 was kind enough to do that, and as I looked over this, I came
18 to the conclusion clearly that it was the government's
19 position at the time of the opening in this case that count
20 seven is the count that charged possession of child
21 pornography, that the child pornography in this case that you
22 will hear talked about is the child pornography that was the
23 photos and videotapes that were taken by Dean Sacco and Linda
24 O'Connor and George Lang. And that's it. Apparently there's
25 been a fundamental shift in what the government is proving in

1 this case. They knew about that stuff back then. But in the
2 opening they didn't say to you, look, we're going to prove to
3 you, we're going to produce photographs. Why would the
4 government shift, change positions, rely now on different
5 evidence? I assume they'll say this indictment, count seven
6 indictment goes back to January of 2004; we intended to mean
7 all those things that Mr. Sacco might have done from January
8 2004 to date. You know what, that's not true either. What
9 the indictment did is it charged Linda O'Connor for the
10 events involving Mr. Lang back then consistent with what the
11 government said in their opening. What they said in the
12 opening is inconsistent with the position that they've taken
13 here on closing. You know what, it's okay, because like it
14 or not, if you look at those pictures, all right, and you
15 compare them against the rules that Judge McAvoy's going to
16 give you in this case, they are terrible. They are children,
17 but they are not prohibited in this sexual conduct. That
18 definition is a technical definition that's very, very, very
19 important because if you don't follow that rule and there's a
20 conviction in this case, then it's fundamentally a flawed
21 result, and you can't do that in this case. The stakes are
22 too high.

23 Listen closely to Judge McAvoy's definition.
24 The photographs show children. They show a child, what
25 appears to be a child, and Investigator Shultz said that.

Summation - Mr. Fischer

2309

1 But the one photograph taken from the internet dated 2002
2 shows a girl standing there naked. It's not prohibited
3 pornography. It does not focus on genitals. It does not
4 show sexual conduct. What's prohibited, that is,
5 genital-to-genital, genital-to-oral, there's a list of
6 definitions, that picture does not show that. What it shows
7 is a girl standing there without her clothes on. That is not
8 prohibited by the law.

9 The other things in the brochure are
10 distasteful at best. But they don't focus on genitals. They
11 do not show oral-to-genital contact. They do not show
12 genital-to-genital contact. They do not show any of the
13 prohibited things. Okay. Ugly, yes. Illegal, no.

14 Your Honor, I'm going to be a bit longer. I
15 don't know if you want me to continue at this point.

16 THE COURT: I think we ought to probably take
17 a break.

18 (Jury excused)

19 THE COURT: At this time I'm going to ask you
20 to quantify that as best you can.

21 MR. FISCHER: Fifteen to twenty minutes.

22 THE COURT: Okay.

23 (Short break taken)

24 (Jury present)

25 THE COURT: Okay, Mr. Fischer. You may

Summation - Mr. Fischer

2310

1 continue.

2 MR. FISCHER: Thank you, your Honor. May it
3 please the Court and counsel.

4 I'm almost done. I wanted to point out about
5 Exhibit 40 that I was just talking, it's really made up of
6 three components, it is in. Fact, I submit to you it is.
7 What did exist in February 10, 2008 when the criminal
8 complain was drafted by Mr. Lyons? It was not something the
9 government had or was aware of when they created the
10 indictment in this case and it was not, according to Mr.
11 Lovric, part of their case when Mr. Lovric made his opening
12 statement to you. But if you consider it in this case, it's
13 made up of three parts. 2002 pictures of girl standing
14 there. Investigator Shultz pointed out that she looked to be
15 young. I agree she does. But she's standing there, that's
16 it. That's what I was referring to when I say she looked
17 young. There are two other components to that exhibit that
18 were apparently mailed up as part of some enterprise, and if
19 those are underaged children, that business enterprise
20 wouldn't last two days in this setting. There's a
21 distinction that -- if you go to that exhibit, there's a
22 distinction that you can point to parts of it. But in none
23 of those parts is there any prohibited conduct.

24 The condom in this case is direct physical
25 evidence. It's important. It shows Shannon's DNA. It was

1 in the shed of the garage at one time. It was moved over to
2 the storage unit 129. It was not removed by Mr. Sacco at any
3 time. What does that show? It shows Shannon O'Connor had
4 sex with somebody, some man. Shannon would never admit to
5 ever having sex with anybody but Mr. Sacco. That exonerates
6 her, exculpates her in some fashion from any other wrongdoing
7 she may have been engaged in. She had boyfriends. Did she
8 bring boys over there? Did she hide a condom? Those are
9 questions that have to be answered. Those questions have to
10 be answered.

11 Mr. Lyons testified, as I recall it, that the
12 government chose not to have a DNA sample from Mr. Sacco.
13 Why? There's no explanation for it. It would have proved
14 either in or out, either yes or no. Yes, a possibility, or
15 no, it could not have been. It could have solved this case,
16 dead in its tracks, resolved, but the government chose not to
17 do it. The government bears the burden of proving this case.
18 Why they chose not to make that one test... I alluded to
19 fingerprints. That was lame. I admit it. It was weak.
20 Taking fingerprints, maybe that wasn't the right thing to
21 address. I addressed it because it came to my mind. It was
22 a legitimate question I thought at the time. But the failure
23 to take a DNA sample from Mr. Sacco when they had the
24 opportunity to do it is different.

25 Psychological motivation. The players here,

Summation - Mr. Fischer

2312

1 what is the psychological motivation? I'm glad that Mr.
2 Lovric asked that question. Liz Chesebro. Unfulfilled need
3 to be a mother. She needed to be Shannon O'Connor's mother,
4 needed to take the place of Linda O'Connor, clear as
5 anything.

6 Renee Lang loved testifying. This was a
7 social outing for Renee Lang. I'm not sure she was credible,
8 but that's why she got up here and testified.

9 Mr. -- then Detective, now Sergeant Blenis
10 wanted to protect and serve. He was doing his best.

11 The DNA expert. I'm convinced that she's
12 going to go out and become a consultant and make a fortune in
13 the business. She's excellent. She loved doing what she
14 does.

15 Kim Hamilton. What's her motivation for
16 coming here? Did she come here to lie to you about
17 something? Did she really have an ax to grind? Would she
18 get up and lie about these events because she was angry that
19 she got accused, falsely accused of sexual misconduct with
20 Shannon O'Connor? You look at her and you evaluate her
21 credibility. She seemed a pretty credible witness, and she
22 didn't seem to have any ulterior motives that I could see.
23 She got up and said, this is what happened, and she stated
24 her opinions, basically, I don't know about Mr. Sacco, but I
25 do know Linda O'Connor didn't do these things. You know,

Summation - Mr. Fischer

2313

1 that's consistent with the evidence in this case, and I think
2 it's the observation made at the time that leaves a question
3 of reasonable doubt as to Mr. Sacco but eliminates any
4 question as to Linda O'Connor.

5 Elizabeth Dinunzio, my client's mother. She
6 has an obvious motivation. Did she lie? No. She stopped,
7 she thought about it, she gave the best answer she could.
8 She didn't lie to anybody.

9 Shannon O'Connor. Her motivation is obvious
10 really. She needed control over her life, and this is a way
11 to do it. It's the classic old story Crucible retold.

12 Mr. Lovric and Mr. Lyons have motivation in
13 this case. No two ways around it; that is what it is. They
14 want to see a conviction here.

15 Clesson Lockwood. Did the FBI know about
16 Clesson Lockwood prior to 2008? I -- well, I note on
17 June 27, 2007. Did the FBI have access to those records in
18 2007? They did. Is it credible to say that we didn't know
19 anything about Clesson Lockwood? No. It's not credible. To
20 say, I didn't remember all the records that I saw, that's
21 credible. To say, I didn't see all these records, lead FBI
22 agent on the case, that's not credible.

23 Adam Lori, AUSA came up from New Jersey,
24 assistant United States Attorney. He was -- I'm glad that he
25 testified because what he did is he talked about a motivation

1 Mr. Lovric has in this case. The news flash you get on the
2 internet, I won this case. That's what Mr. Lovric wants.
3 His motivation is to maybe rescue a damsel in distress, but
4 he used this girl for his own purposes, to get a conviction
5 in this case. He put this broken piece of crystal back
6 together in his own mold the way that he wanted it done. He
7 is an example of what the system did here. Everybody had
8 their own motivation. They used this girl for their
9 purposes. You know, I'm not exempt from that. My
10 cross-examination of her, I crossed her about specific
11 incidents for a particular reason. But the government, if
12 they get up and say they didn't do that, can't accept it.

13 I'm just about done. I'm standing here and
14 I'm telling you, on this evidence, on this weak, unstable,
15 disjointed, inconsistent, false evidence you've been
16 presented, both on direct and cross-examination, the
17 foundation is not sufficient to support a conviction on these
18 federal charges. Morally, if you believe what occurred here,
19 if you believe what Shannon O'Connor says morally, God will
20 judge, but legally, on these facts that you were presented,
21 on this testimony, on this incredible testimony based
22 primarily upon an incredible witness, cannot support a
23 conviction on these federal charges. With the stakes such as
24 they are, beyond a reasonable doubt, just doesn't rise to
25 that level.

Summation - Mr. Fischer

2315

1 I need to step away. I give you the case. I
2 ask your favor to take the time, analyze this critically,
3 analyze it intellectually, based upon your reason, your
4 common sense, but the facts as you believe them to be
5 credible against the law that the Judge gives to you on this
6 evidence, using your reasoned, intellectual skills mandates a
7 not guilty verdict. And I ask that after you look at all of
8 this, look at it in that context and see if it fits with a
9 not guilty verdict. I submit to you that it will. And on
10 that basis, it's your duty, your oath, your obligation -- and
11 the oath is something I know that every one of you take very
12 seriously, more seriously than some of the witnesses who
13 testified. It will be your sworn obligation to do your duty,
14 as unpleasant as it may seem to you, to return a not guilty
15 verdict in this case.

16 The press is here watching us. They may have
17 their take on that. That's not a consideration. This
18 evidence did not rise to the level of beyond a reasonable
19 doubt in this case, it mandates a not guilty verdict. Mr.
20 Sacco will face judgment on the state charges and in the eyes
21 of God, but on these charges in this court, on these facts,
22 this law, there cannot be anything other than a not guilty
23 verdict.

24 Thank you. Thank you, your Honor.

25 THE COURT: Thank you, Mr. Fischer.

Summation - Ms. Peebles

2316

1 All right. Miss Peebles, you ready?

2 MISS PEEBLES: Words. That's why Mrs.
3 O'Connor is here, because of the words spoken by her daughter
4 Shannon O'Connor. And as the distinguished United States
5 Supreme Court Justice Louis Brandeis once stated, the logic
6 of words must yield to the logic of realities, and the words
7 in this case don't even come close to matching the realities
8 as the case has been presented against Mrs. O'Connor.

9 We've heard a lot about these words and why
10 and the words by Shannon O'Connor in this case were used as
11 weapons against her mother and they were like daggers to her
12 heart as she sat in this courtroom. There's been a lot of
13 talk about books and if Shannon O'Connor were to write her
14 autobiography it would be entitled American Dream Girl and it
15 would read something like this: Hi, my name is Shannon
16 O'Connor and I'm now 14 years old. I grew up in a small town
17 in New York called Deposit. In Deposit everybody knew
18 everybody's business. It's always been just me and my mom.
19 My mom's married to a man named Raymond O'Connor and he's in
20 state prison. I have his last name but he's not my real
21 father and I never lived with him or had much contact. I
22 really could have used a father figure in my life. We never
23 had much money but I seemed to get everything I could
24 possibly want or ever need. My mom would buy me toys and I
25 didn't even need them. I know that may sound strange coming

Summation - Ms. Peebles

2317

1 from a kid but it seems to be a very important part of my
2 upbringing. When I was very young my mom had brain surgery
3 and had I to stay with family friends. When my mom recovered
4 I went back to live with her and we lived in a house on Pine
5 Street. It was kind of a pain because I had to walk up a
6 flight of stairs and carrying things up the stairs was a
7 drag. Trust me, it was not just me, my mom hated it too, so
8 we moved. We moved in to a house on River Street. It was
9 right on the river with only the road in between and this
10 will become important in a minute. My mom collected
11 disability and sometimes she got in arguments with the
12 landlord, Sharon Wright, if she did not pay on time. I guess
13 the entire town must have known, after all, it was awful
14 small and everyone knew everyone. Pastor Kathy Myrick was a
15 family friend. I guess my mom went to her for some type of
16 counseling. She was a great mom to her kids. We went to her
17 church. I was later introduced to George and Renee Lang when
18 I was ten years old. George Lang helped my mom on the
19 computer because she had no clue what she was doing. George
20 and Renee would come over to the house together and
21 eventually we began spending more time at the Langs. We did
22 not have any family of our own so I started calling them
23 Grandma and Grandpa. They lived in a single-wide trailer in
24 Nineveh and we would sometimes spend the weekends with them.
25 It was kind of nice getting out of Deposit. I loved George

Summation - Ms. Peebles

2318

1 and Renee but my mom and Renee would argue sometimes and one
2 time before George died they got into an argument and Renee
3 dumped yogurt on my mother. I'm not sure how the argument
4 started or what it was about. We eventually stopped seeing
5 them so much after that and it was hard because they were
6 like family to us. The plans they made to adopt us fell
7 through and we never talked about it again. After George
8 died we were not even invited to the funeral.

9 Growing up in Deposit there was not much to do
10 so sometimes my mom would plan mini getaways and several
11 times she took me to the Best Western in Johnson City. It
12 was a lot of fun. We would bowl, shop, go to dinner,
13 Chuckie Cheese, and get our hair done. I loved those trips
14 with my mom. In June of 2006 we lost our home and all of our
15 possessions. It was really hard and we were devastated. My
16 mom's friend Delores Tompkins was really nice and she agreed
17 to let us stay with her until we could find affordable
18 housing, but one day Delores received a bill for ordering
19 pornography. She was upset. It was definitely not me. I
20 always seemed to get blamed.

21 One day when we were with Delores my mom found
22 an ad for a home in Norwich. Thank goodness because we were
23 wearing out our welcome. She called the number and spoke to
24 someone over the phone. We went and looked at the house. It
25 was on Fair Street in Norwich. We wanted the house really

1 bad. I don't know about the money or where she got it or how
2 much she paid. We really wanted the house so she called the
3 guy back. I got on the phone and asked if I could get a
4 puppy and the landlord said it was okay. My mom spent a lot
5 of money on the puppy for me and I named him Buddy. I was so
6 excited but I never dreamed how much work a puppy would be.
7 My mom said it was my puppy.

8 On August 2 of 2006 we met the landlord and my
9 mom signed some papers. I'm not sure what they were talking
10 about. The landlord's name was Dean. He was nice. He
11 helped us move our stuff in. I thought he was really great.
12 He told my mom about the YMCA camp and my mom signed me up.
13 The Pipers lived upstairs and they were really old. They
14 seemed like nice people. The Y camp was great. I loved all
15 the camp counselors, Rhett Jenung, Lance Thorn and Jenny. I
16 loved being around them. After ten days living in our new
17 home I had about had it with the puppy. It was constant and
18 me and my mom were fighting constantly so I went to camp and
19 I think this was on August 11. I told my camp counselors
20 that I had taken my mother's medication in order to kill
21 myself. I told them that I took my mother's insulin and
22 three pain pills. I could not believe all the attention that
23 my saying this sparked. Lance called for an ambulance. I
24 begged him to ride with me. I could not believe everyone
25 that showed up at the hospital. All these people cared about

1 me. It felt really good. I met my Naomi from DSS for the
2 first time. She was really nice. I told her that I had
3 never tried to kill myself before, but I guess I already told
4 my camp counselors that I had tried twice before. But who
5 can fault me, I couldn't keep it straight. Anyway, they sent
6 me to a real hospital, not a psychiatric hospital. I know
7 they took a blood test but no one ever asked me about the
8 results. Glucose levels, what is that and who cares if they
9 were normal? Who cares if they decided not to do a chemical
10 test? I really did take my mother's insulin. It didn't
11 matter anyway because I said it so it must have been true.
12 Besides, I was really mad at my mother. I told everyone at
13 the hospital that my mother was physically and mentally
14 abusive to me. I told them I didn't want to see my mother.
15 I didn't have bruises on me but what difference does that
16 make? I said -- I said it and they believed me. Why would
17 they question a 12 year old kid anyway. After five days in
18 the regular hospital I went back to live with my mom. We
19 patched things up over the dog and I told her it was not just
20 her fault. Everything was fine until my mom got sick a few
21 days later. She was violently ill and the old man upstairs
22 rushed her to the hospital. I was mad, I was not going to
23 stay with the Pipers. I went downstairs and stayed by
24 myself. My mom probably planned this so the next day I
25 showed up at the Y camp and told everyone I had been left

1 home alone with no food. Naomi showed up and she was so
2 nice. I guess the Pipers realized I was too much for them so
3 Naomi got ahold of Grandma Lang, she agreed to watch me,
4 though my mom and her were not on speaking terms, but it was
5 great to be back at Grandma Langs. I was happy at Grandma's
6 house. Nothing about being there bothered me. I had really
7 missed her. My mom got out of the hospital. I got to speak
8 to her on the phone but Naomi made Grandma Lang listen to our
9 conversation. It was little awkward but it worked out okay.
10 Mom really wanted me back. She told me about all of the
11 things she brought to fix up my room. I had no idea where
12 she got the money. I loved gettings things. I told Grandma
13 Lang the landlord creeped me out. Things became a little
14 tense with Grandma Lang. She had rules and I began hating
15 living at their house. I really started appreciating my
16 mother. Toward the end of September I got caught looking at
17 pornography at Grandma Lang's daughter house and I tried
18 denying it and blaming my mother, that seemed to work in the
19 past with Naomi, but she, my mom, wasn't even around, but I
20 tried anyway. I was looking at Triple X videos and sites
21 referencing gay men and adult chat rooms. There were also a
22 few teen pregnancy sites but I begged Naomi not to tell my
23 mother. When she confronted with me the hard evidence I
24 could not deny it any longer and I didn't want to ruin the
25 visit I was going to have with my mother. How could I have

1 been so careless? Oh, well, I think Naomi is likely to blame
2 my mother anyway. I also thought I could tell others. I was
3 hoping they would ask me what is wrong and maybe they would
4 just feel sorry for me. After a while I could not wait to
5 get away from Renee. She was driving me crazy, making me do
6 chores. After a while I just walked away and slammed the
7 door. I was not used to all of those rules. She was also
8 making me play an instrument and I thought I'm done with
9 that, but Grandma refused to give me permission to quit. I
10 thought too bad, I'll have Naomi sign the slip. She does
11 whatever I want.

12 I finally returned home to live with my mother
13 toward the end of October of 2006 I was thrilled. My mom had
14 redone my entire room. Boy, she really out did herself.
15 When I returned home my Naomi was still my caseworker and she
16 was great. We both started counseling and my mom was getting
17 assistance with her parenting skills. The Judge issued an
18 order which I guess said that I could not be around Dean
19 Sacco unsupervised. I guess it was because I told Grandma
20 Lang he creeped me out, but not always. Sometimes I liked
21 being around him. I tend to change my mind from time to
22 time. It didn't make a difference to me. It's not like my
23 mom would have control over me. Dean and I talked a lot. I
24 complained about my mother to him. I even found his
25 pornography collection in the garage. That was a find. My

1 friend Deanna Kirwin spent the night after a Y dance and the
2 next day I took her out back and showed her everything. We
3 were looking at magazines and I showed her his video
4 collection. I told her my mother couldn't find out,
5 otherwise she'd make him put a lock on it. I never wanted
6 that to happen. I couldn't imagine Deanna ever telling
7 anyone. She would get in trouble too for looking at the
8 stuff. If anyone ever asked, I'll just deny it. I'll be
9 believed anyway.

10 I talked to Dean a lot. One time I told him
11 that I had experience with sex with my Grandpa. I couldn't
12 think of any other male in my life so I told him I did things
13 with my grandfather. What difference would it make? He's
14 dead. I felt proud to tell him I had experience. I think it
15 worked because he became more comfortable around me. I went
16 to the YMCA several times with Dean. I also wanted to visit
17 him when he was in town. I would tell my mother I was going
18 to play games and she would always let me. This doesn't mean
19 anything just because I went places him. One time when I was
20 up stairs my friend Brook came over to the house. Brook and
21 her dad just knocked on the back door and came down. I told
22 the prosecutor that my mom came running up the stairs after
23 me and that I hurried and put my clothes on and came down. I
24 also said Dean came down and my mom was outside and everyone
25 was talking. What do you mean Mr. Parmalee said my mom

1 wasn't out there? That she had directed them to where I was
2 and simply went back inside. That doesn't make any sense
3 with my story; that she allowed me to have sex with Dean and
4 that she was part of it. She would want to cover it up. Why
5 believe Mr. Parmalee? Everyone believes me, not him.
6 Besides, what stake in the outcome does he have? My story is
7 much better anyway.

8 My mom tried hard to bond with me after I was
9 returned to her. She took me to the Best Western to go
10 shopping and hang out. We left on Friday and took the bus
11 from Norwich. I have no idea how she paid for it and I
12 didn't care. I told her I really wanted a skateboard so she
13 took me to Wal-Mart and bought me one. I appreciate her
14 efforts, I really do. Naomi was no longer my caseworker at
15 this time. Liz Chesebro took over and she was great. She
16 came over to the house. She talked to me about how I was
17 getting along with my mother. She really seemed to care.
18 She didn't seem too impressed with my mother and she talked
19 to her about paying December's rent. Apparently Dean was
20 being a pain. He had called DSS a few times and he also
21 threatened to evict us. I guess my mother blew all of our
22 money at the Best Western on December 1. She should have
23 known better. It doesn't matter anyway, she'd start
24 receiving HUD assistance. As far as I know, Liz never asked
25 about Dean, whether I was around him. I guess she didn't

Summation - Ms. Peebles

2325

1 even realize he was living upstairs. It wouldn't matter much
2 anyways. It's not like I would tell her what I was doing.

3 Anyhow, about my birthday. For some reason
4 Dean couldn't come to my birthday party. I was mad. I
5 called him and he wished me happy birthday but he had to
6 work. My birthday was on Wednesday. It doesn't matter. I
7 was still really mad and it was a good thing my mom bought me
8 a TracFone. I can call whoever I want whenever I wanted to.

9 I still couldn't get along with my mother.
10 She just didn't understand me. On January 11 I got mad and I
11 decided I was going to go run away. I took my TracFone and
12 walked to Brook's house. My mom tried calling me but I
13 wouldn't answer the call. Next thing I know, Norwich police
14 are at Brook's house. Can you believe her? She called the
15 police. They drove me home as far as I remember, told me
16 that I had to obey my mother. I know it would seem weird she
17 would call the police on me. I'm eventually going to try and
18 claim she prostituted me to the landlord and two men at the
19 Best Western. But who's going to remember this any way?
20 They'll believe me over her anyway. Elizabeth Chesebro came
21 and talked to me about running away. I was not too happy but
22 I just told her my mom was yelling at me and she tried to get
23 my mom to recognize it was partially her fault because she
24 didn't think my mom should be yelling at me. This incident
25 blew over and we started getting along better. I was still

1 receiving counseling. I had my own separate counselor, she
2 was really nice.

3 Somehow my mom got more money. It was
4 approaching the end of January. I begged her to buy me
5 another puppy and she did. I count believe it. She spent
6 almost \$900 on a dog for me. I guess she didn't learn her
7 lesson the last time. Oh, well, I was happy. I tried harder
8 to take care of the dog. Because we spent so much money on
9 the puppy, my mom ran low on money in February. It was the
10 end of the month and she knows how much I love pizza. I
11 really wanted pizza so we walked to Pizza Hut. This was
12 embarrassing. We ordered, ate, and left Pizza Hut without
13 paying. We were told to come back inside, so we did. My mom
14 got in trouble for this and she should have known better.
15 The next day Liz showed up at school and she told me I was
16 going to be placed in foster care. She said my mom could not
17 afford to support me. At first I was upset but after
18 listening to Liz, I knew she was right. I was taken to the
19 Hamiltons. That was great, I loved it there. There were a
20 lot of kids and a mother and a father. Liz explained to me
21 that my mom was not equipped to raise me and that I was much
22 better off with the Hamiltons. I sort of felt bad for my
23 mom, but not really. Liz was driving me around, to and from
24 school, getting me settled. I really enjoyed her company.
25 One day we were talking about school, talking about condoms,

1 what they were used for. I think it was the very next day my
2 teacher, Mrs. Duke, was lecturing us on puberty and sex. I
3 really liked Mrs. Duke, so I approached her after class. I
4 asked her if someone younger had sex with someone older, is
5 it their fault if they did not say no? I then went on to
6 tell her I had sex with the landlord. I referred to him as
7 the landlord because I didn't want her to think I was
8 particularly close to this person. I couldn't believe what
9 happened after that. Liz came to the Hamiltons, I sat down
10 with her and I told her about what happened with Dean. I
11 told her my mother didn't know and he would tell me to be
12 quiet so my mother wouldn't hear. Liz was furious that my
13 mother violated the Court order. She kept asking me why my
14 mother would allow me around him if there was a court order.
15 Liz said it was my mom's fault. If she had not violated the
16 order, this could have been prevented. Liz took me to the
17 police station. I met Detective Blenis. He was cool. I
18 told him the same things I told Liz and we talked about
19 getting an examination. I could not believe all the
20 commotion this started. The next day I went roller skating
21 with the Hamiltons and I had the time of my life.

22 Liz took me for an examination and I told the
23 doctors I had never been assaulted or otherwise abused.
24 After the exam I got to go to the police station again and
25 this was really cool. I got to wear an earpiece and record

1 Dean talking to me. I was given a script to follow and I
2 told him I was concerned that I might be pregnant. The first
3 call didn't get taped and he didn't know how to call me back
4 because I was at the police station, so we called my home
5 phone and talked to my mom. She told him I was in foster
6 care. He was asking my mom that I sounded depressed. He
7 apparently was fishing for information. He is such a dope.
8 He started asking me about what I said about my Grandpa. I
9 couldn't believe he brought that up. I tried to deny it,
10 saying that I said ew, he's really old, he was sick,
11 undergoing chemo. When people are sick like that they don't
12 do stuff like that. He was baffled. He asked if he had
13 imagined all of that. The last thing I need is for Detective
14 Blenis and Liz to think I had some close relationship with
15 him. I don't think that matters anyway because of my age but
16 I don't want it to look like I had in any way initiated any
17 of this. Then he would not shut up about our relationship
18 and our talks. His pleading for mercy was a little more than
19 I could handle. I realized that he never mentioned my mother
20 getting in trouble but what difference does that make? He
21 was pathetic. I couldn't believe he said so consider if the
22 person was a bad person that got you pregnant or that he was
23 a loving person, if he had the best intentions in mind or if
24 you were raped or brutally attacked, you have to decide did
25 you want to have sex with the person? Did you initiate a lot

1 of things that happened? If that is true, then you might
2 want to consider being more of an adult. That's just
3 ridiculous. He shouldn't have taken advantage of my
4 vulnerability. I was too young anyway.

5 The second phone call we used -- we used my
6 cellphone so he would feel comfortable answering the phone.
7 The day before we had a restricted number, he might have
8 caught on. I know I claimed I never called him before,
9 especially nine times on New Year's, but for some odd reason
10 I believed he would answer my cellphone without hesitation
11 once he saw the number come up. I had not even thought about
12 the phone calls when I started claiming my mom and George
13 Lang sexually abused when me I said my mom allowed the
14 landlord to do those things to me. Those phone calls were
15 seven months earlier, how was I supposed to remember what was
16 said.

17 Anyway, it was a lot of fun making the calls.
18 I felt like one of the gang. My mom had no idea what was
19 going on. I was ordered not to discuss it with her, which
20 was just fine. She would have been upset and I didn't want
21 to have to deal with her anyway.

22 When I lived with the Hamiltons, I set up a
23 MySpace account. I said I was 17 years old, and I named
24 myself party girl and someone who loved hot guys. I picked
25 Liz, Naomi and Theresa Jones as my top friends. I really

Summation - Ms. Peebles

2330

1 felt like one of their group. They had all kind of stuff on
2 their MySpace pages and I learned a lot about each of them.
3 It was really cool. I really felt like I was part of their
4 click.

5 I worried a lot about my mom, whether she was
6 going to jail for leaving Pizza Hut and violation of the
7 Court's order. No one really told me what was going on and I
8 worried whether she was taking care of herself. I wanted her
9 to go to my school functions and track meets but she never
10 would. I finally learned that she was going to have to go to
11 jail and I was really upset. I could not understand why she
12 would have to go to jail. It didn't seem fair. Liz said she
13 should go to jail, it's her fault and she needs to change her
14 behavior. I didn't believe her at first but then when I
15 talked to my mom while she was in jail she seemed happy. I
16 thought she would be upset. It didn't seem like she was
17 learning anything. Liz kept saying she has to want to
18 change. Well, I have to at least give her a chance. Toward
19 the end of summer I was really concerned that my mom would
20 not change. Liz said she wouldn't and I thought she just
21 might take off and live with Ray. She said Ray would be
22 getting out some time. I figured she'd leave and I'd never
23 hear from her again. I couldn't believe she'd do that but
24 the more I thought about it the angrier I became. Liz asked
25 me about mom paying rent and whether she said anything to me

1 about it. I think she kept asking me that because she
2 thought the landlord had sex with me for the rent and it was
3 my mom's fault. I did not really know how my mom paid the
4 rent but it was probably her fault. She should have followed
5 the court order and I wouldn't be in this mess. I don't even
6 think she cares and even if she says she does, she's never
7 there. At least when she's in jail I know where she is and
8 she's being taken care of. I felt like everything was out of
9 my control and my mom was due to be released from jail. I
10 really wanted to see her but for some reason I was not
11 allowed. I could not believe she, my mom, would be happy in
12 jail. Toward the end of September I decided I was going to
13 tell my counselor I wanted to kill myself. I thought maybe I
14 would windup in the hospital, but instead I ended up in a
15 psychiatric center and that was not really what I had in
16 mind. They evaluated me and asked if I suffered from
17 auditory and visual hallucinations. At the time I said I
18 didn't, but I was certainly going to keep that in the back of
19 my mind. I went crazy when I first arrived. I was
20 introduced to Dr. Michele Toth and Lisa Flores-Diaz, two very
21 nice people. I began discussing things with Miss
22 Flores-Diaz. She seemed to really care. She asked me if my
23 mom was prostituting me for rent. I was not sure what she
24 meant so I told her my mom was fine with it. She said it's
25 fine, better than being homeless. Liz would visit me at the

1 GBHC and so would the Hamiltons. I had no idea what was
2 going on with my mother and she was not allowed to see me.
3 There were a lot of people interested in my case and they had
4 team meetings and they all sat around discussing me and I
5 felt really important. Every time I said something I'd get a
6 lot of attention. For a 13-year-old kid that was pretty
7 cool. I knew my mom was being released from jail but I had
8 no idea what she was doing. When I asked Liz she said not
9 much. I was mad. It didn't seem like she was even trying.

10 It was the end of October and I was in the
11 Greater Binghamton Health Center and my mom didn't seem to
12 care. Well, I was going to make her care, that's when I
13 decided to tell Liz that my mom knew what was going on with
14 Dean and that she took pictures. This was great. It brought
15 back memories of when I met with Liz and Detective Blenis
16 months ago. I got to leave the facility and Liz took me to
17 the advocacy center and I was videotaped. Detective Blenis
18 really felt bad for me. It seemed like the more I said about
19 my mother, the more praise I received. I first told them I
20 was listening to my music in my room and my mom walked in and
21 covered the window with a sheet. Dean followed her in the
22 room, my mom sat against the door while Dean had sex with me.
23 My mom took pictures of it and I was mad. I wanted to punch
24 her in the face. I guess as they continued to ask questions
25 I forgot what I said earlier so when they asked me when did

1 she put the sheet up I said a few weeks before because the
2 sun was waking me up in the morning. After I said all this
3 Detective Blenis typed up a statement and I signed it. I
4 couldn't wait for my mother's reaction.

5 Liz told me that day she was coming to my
6 Halloween party but she never showed up. I was so upset I
7 started banging the walls and I had to be sedated. I waited
8 and waited and heard nothing about my mother. On November 6
9 I spoke to Liz on the phone and I asked her if they had
10 talked to my mother and she said they'll talk to her when
11 they feel it's appropriate. Liz would not come and see me
12 the next day. I was very upset and I tied a shoelace around
13 my neck and had abrasions on my skin. I told my counselors I
14 was trying to kill myself and Liz was called that same night
15 and the next day Miss Lisa spent a lot of time with me. I
16 get a lot of attention when I do these things.

17 I guess they finally talked to my mom and she
18 denied it. Apparently she told Detective Blenis Dean had
19 taken pictures of the house and he could check Rite-Aid to
20 see if there was a record of photographs being developed. He
21 had to explain to my mother that they would not develop naked
22 pictures of her daughter at the Rite-Aid. She is pretty clue
23 less. Unfortunately, this did not create the reaction I had
24 hoped so I started acting out again. I was telling my
25 counselors that I had more to tell. I thought this might

1 also be a good time to pull out the auditory and visual
2 hallucinations that I had learned about. I figured why not,
3 it will probably create more of a stir. I talked to Liz and
4 I told her my mother had sexually abused me and so did George
5 Lang. This was great, I got to leave the facility again and
6 be videotaped. This time Detective Blenis was there. He was
7 outside the room and the other woman named Denise sat in with
8 me and Liz. They started asking me questions and I told them
9 that when I was 11 and a half, almost 12 my mom walked into
10 the bathroom and started sexually abusing me. I realized I
11 never said I was 10 years old when my mom fondled me. I was
12 certain I was almost 12 during this interview. My mom, well,
13 she didn't say anything. She just walked in, started
14 fondling me and made me fondle her. Prior to that she just
15 let me do my own thing when I was 9 or 10. It was at the
16 same time in December right before my 12th birthday that
17 Grandpa Lang started sexually abusing me. My mom was having
18 sex with George and they dragged me in on it. He made me
19 give him a blow job and my mom took pictures with a digital
20 camera. There are pictures of me on a hard drive doing this.
21 It was the kind of camera you hook up to the computer and the
22 pictures show up from the camera to the computer. I know
23 George is dead and Renee doesn't know anything about
24 computers. He has a password so you probably won't be able
25 to get into this computer. Trust me, there are pictures of

1 me doing this on his hard drive. What, what do you mean
2 there's a forensic analysis of the hard drive and you did not
3 find pictures? Well, he must have erased them. What do you
4 mean there was never a digital camera hooked up to his hard
5 drive? You have to believe me, it happened. Renee said he
6 didn't own a digital camera. What does she know, I am
7 telling the truth. I know Grandpa Lang was very sick with
8 cancer. Why would Renee say he was impotent. After talking
9 to the prosecutor, it must have happened the year before.
10 What do you mean Grandpa Lang was impotent a year before he
11 was diagnosed with cancer in 2004. You have to believe me.
12 He had sex with my mom and I gave him a blow job. I think
13 you will believe me when I say this, everyone else has.

14 I did not want to see that videotape of me
15 replayed again. I can't believe the lady had the nerve to
16 play that again and again after I told her I didn't want to.
17 I'm so used to getting what I want and no one ever questions
18 what I said. Now all of a sudden inconsistencies and
19 impossibilities are a big deal. Well, as for me and the
20 landlord, well, also my mom had sex with him too and took
21 pictures. I know it may seem hard to believe but trust me,
22 Dean just wasn't into young, skinny woman. He also was
23 attracted to my mother.

24 As for the Best Western, my mom took me there
25 on three occasions since moving to Norwich. Once we just

1 went shopping and twice after that, around my birthday during
2 a school week she took me. She used her own name when she
3 checked in. We would then bring the guys up to the room.
4 How was I supposed to know that they could get the
5 registration records? Like the prosecutor said, maybe the
6 guy was already upstairs in the room when we arrived. Who
7 cares if my mom's phone records don't show any other calls to
8 the Best Western or to any bus company. We could have gotten
9 there any number of ways. I'm just not sure how but there
10 are ways. How am I supposed to know where these men came
11 from. For all I know they fell from the sky. Don't make me
12 describe them, I get confused. I can't remember what I said
13 and for God sake, don't play that video again. That was
14 months ago. You have to believe me. Why would I make this
15 up? I must be telling the truth.

16 This last claim really got things going. I
17 couldn't believe it when I was told that this was going to be
18 a federal prosecution. Immediately I said I wanted to meet
19 the person who was going to be in charge of things. They
20 arranged a pizza party at the federal building and I was
21 introduced to the prosecutor. He must have known how much I
22 love pizza. There was no holding back now. I certainly hit
23 the big leagues. I bet even my mom would be impressed with
24 me and she definitely would be thinking of me every day. I
25 got a little flighty as the days got closer to my testimony

1 against my mother. I joined a cult and I claimed I was a
2 devil worshiper. I worked through it and I was not going to
3 let my followers down. I'm certain my mom would be surprised
4 with my strength and poise as I walked into this courtroom.
5 I certainly had enough practice. I had an entire entourage
6 with me, including a bodyguard, and I really felt like a
7 celebrity. Everyone was hanging on my every word. I was not
8 about to crack. I was extremely annoyed at one point and I
9 needed a break. After the break I magically realized I could
10 say I don't recall and I don't remember. What more could
11 they ask. That was a great find. I made it through two days
12 in trial where the attention and focus was on me. I had to
13 make sure I said about my mother, I love her with every ounce
14 of my body. I couldn't look at her right then, I had to
15 focus on Michelle and my supporters. I'm sure my mom
16 understands all of this is for her own good. She's not a
17 capable mother, she's not a strong mother, and I can't
18 continue to worry about her well-being. She's better off and
19 as for me, I'm preparing for my sequel.

20 Now I must acknowledge those who assisted me
21 in creating this wonderful masterpiece. I would first like
22 to thank all of those from DSS that have helped me with my
23 writing and for a special thanks to Liz Chesebro, for without
24 her this could have never happened. I am forever grateful
25 for her assistance, love and support. I would also like to

1 thank Detective Blenis for always believing in me and also
2 Agent Lyons who tried hard to make excuses for me when he
3 testified in front of the grand jury, especially when he
4 stated that I was in the care, custody and control of my
5 mother when I made my initial claim against Dean Sacco, which
6 is why I didn't implicate my mother at first. Thanks for
7 your valiant effort, whether you misspoke or whatever, I
8 really appreciate you trying to make excuses. As you know, I
9 was already in foster care and my mother's contact with me
10 was limited at that time as well.

11 Lastly, my heart goes out to Mr. Lovric and
12 his creative wisdom. Having one of the men from the Best
13 Western waiting for me upstairs was brilliant. I don't know
14 why I didn't think of that when I first was interviewed.
15 Also, having my mom bound up the stairs when the Parmalees
16 came over to make it sound like she was involved was a stroke
17 of genius. What does it matter what Mr. Parmalee says.
18 Also, why couldn't Dean be making calls from my home phone to
19 his work on my birthday. What difference does it make that
20 he was calling Norwich from his cell one half hour later.
21 It's still a great suggestion. I'm not sure how you handled
22 the rent thing, but it sounds good to me. You brought up how
23 she struggled. I figured that must be good enough. Besides
24 introducing a letter from Dean that said he was about to lose
25 the house in September '07 because the tenants failed to pay

Summation - Ms. Peebles

2339

1 will surely confuse the jury and they may just buy it. Never
2 mind my mother was in jail and I had already made claims of
3 sex abuse against Dean. I guess it's not surprising she was
4 not paying him then. Also, the camera. I know Investigator
5 Shultz said I never identified the video camera but once you
6 showed it to me, I thought why certainly that's the video
7 camera that Dean used to tape me. I'm not sure where you
8 came up with me telling my teacher my mom sexually abused me,
9 but that works for me.

10 Finally, the phantom storage shed is a great
11 cover. Why else wouldn't they find any pictures. Of course
12 there must have been some other storage shelter in a far off
13 land. What difference does it make that Dean saved a trophy
14 amongst all his other worldly possessions in Norwich. It's
15 still a great argument. The Lang hard drive. He must have
16 erased the pictures, otherwise, they'd still be there. Good
17 one, I knew you'd think of something to try to negate the
18 fact that there was never a digital camera hooked up to the
19 USB port. Coming up with a phantom flash drive is simply
20 brilliant. I don't know what that is but good job. I can
21 picture Grandpa Lang on his death bed erasing pictures of me.
22 Also, phew, thanks for pointing out the timing of everything
23 and trying to make sense of my claims. I really wasn't
24 thinking of how sick he was when I was 12. Good thing I was
25 steered in the right direction. You have no doubt proven

Summation - Ms. Peebles

2340

1 beyond a reasonable doubt that I was under the age of 16
2 years old and that I was in the care and custody of my mother
3 when I was with Dean. As for my mother having knowledge or
4 partaking in any pictures, the jury has my word. Thanks
5 again for everything and just believing me like everyone
6 else. I'm confident once you speak to the jury that they
7 will just believe me too. I hope you are around to assist me
8 with my next masterpiece. Until then, take care.

9 As only a good mother would do after reading
10 her daughter's book, Linda O'Connor sends her daughter a
11 letter praising her for her writing.

12 Dear Shannon. I have received and read your
13 book. I must say it's a fine piece of writing.
14 I'm impressed with your knowledge and the persuasion in which
15 you write. I should not be surprised, after all, you did
16 receive an award for being a creative writer. However, I
17 must point out that much of what you say is pure fiction and
18 perhaps you should entitle the book, American Attention
19 Seeker- a Systematic Failure. Market it as a fairytale
20 fictional read. I know you have frequently ignored my
21 suggestions in the past and you tend to lack respect for
22 anything I have to say but just this once may you rethink
23 your choice of words and only then may we ever begin to
24 repair the damage that has been done. While you certainly
25 have already sold hundreds of copies, I would hope that you

Summation - Ms. Peebles

2341

1 would not forsake our wonderful close mother/daughter
2 relationship at all cost. I will close by saying the loss of
3 your love pales in comparison to anything I've already gone
4 through. May all of your dreams come true and remember
5 however angry I maybe, I will always love you. Roses on your
6 pillow. Mom.

7 The government has stood before you and has
8 told you that the crimes against Mrs. O'Connor are horrific.
9 They're not horrific. They are absolutely, unconditionally
10 absurd. As hard as they have tried to twist the facts and
11 rethink their theory and color the testimony of the witnesses
12 that have been presented before you, they have failed
13 miserably.

14 When I opened I told you they would be able to
15 prove that Linda O'Connor mismanaged her money. That she
16 took from Pizza Hut without paying. That she violated the
17 court's order and allowed her daughter around Dean Sacco.
18 And those things she admitted and she did without hesitation.
19 What she has gone through knowing what she knows now and
20 having violated the Court's order, she went to jail and never
21 once wanted her daughter to feel upset or guilty about her
22 being in jail for violating that court order. And Shannon
23 took it as Linda being happy while she was in jail. Linda
24 has missed the company of her daughter for well over a year
25 now. This case is similar to a story told by a young boy to

1 his father one late summer evening. The kid had been coming
2 home late. The father said one last time, that's it. You're
3 not going to be going anywhere. You're not going to have to
4 worry because there's not going to be a curfew. He went
5 beyond the curfew one summer night. He came to his father
6 and his father was furious and he was tattered, torn, his
7 clothes had been ripped and he had a stick in his hand and he
8 was filthy and his father looked at him and said, son, where
9 have you been, and he says you are not going to believe it.
10 I got into a huge altercation with a 700-pound grizzly bear
11 and I fought and I fought and I fought. I used this stick
12 and I finally fended him off and I killed him. And, Dad,
13 this is the stick that I used to kill the bear. And his
14 father said, well, that's a nice stick but where's the bear?

15 What the government has presented in this case
16 is a stick. There is no bear. There is no proof whatsoever,
17 circumstantial or otherwise, to support the claims against
18 Mrs. O'Connor. The range of emotions are indescribable of
19 what Mrs. O'Connor has had to go through. Believing her
20 daughter had been sexually abused, knowing her daughter was
21 in a psychiatric hospital, blaming herself and now having to
22 sit in a federal court with her life on the line as the
23 result of things that her daughter is now claiming against
24 her. I can't even imagine.

25 Kim Hamilton came into this courtroom because

1 I subpoenaed her. She had six, seven foster children running
2 around her house. How inconvenient is that? I drag her from
3 Norwich up here to testify. What ax does she have to grind?
4 I didn't ask her what her opinion was about Mrs. O'Connor. I
5 was asking her about events that she witnessed firsthand as
6 the foster mother. I was not the one who asked her opinion.
7 That was Mr. Lovric. And she gave her opinion based on a
8 mother and she said from her heart and her gut and her seeing
9 what was going on between her and Linda, the mother, the
10 mother, and Kim Hamilton said the idea was for Shannon to
11 be -- eventually be reunited with her mother. She also had
12 no problem staying with her. She was a visitor at the
13 psychiatric hospital. Where would she have an ax to grind?
14 She's still actively working with DSS. She has foster
15 children, and in the middle of adopting. Why would she want
16 to go against the very agency that she has to work with
17 regularly. I'm sure it's not the agency but the bottom line,
18 what ax would she possibly have to grind? Zero. She doesn't
19 know Linda from a bag of beans other than the things she
20 heard on the phone and she heard Shannon talk about. She's
21 not friends with Linda. Is she concerned about the
22 allegations against Linda based on the experience she had?
23 I'm sure she's semi-concerned because -- and by the grace of
24 God -- she was accused of sex abusing Shannon and other kids
25 and she was having her sign the form and, of course, she

1 would be concerned and, of course, she would want to come in
2 here and point those things out in order to give you a fair
3 assessment of the situation, a full picture of the situation.
4 If you look at the testimony of Mallory Monagan, my heart
5 went out to her. That is not the same reaction I had when
6 Shannon O'Connor took that stand and was making allegations
7 that her mother was sexually fondling her in the bathtub and
8 she never said it was when she was 10. If you look at the
9 interview she says six or seven times on the video it was
10 right before her 12th birthday. Eleven and a half in
11 December of 2005. Ten years old, the first time I heard 10
12 years old is when she took the stand. There was nothing
13 ever, not a thread of proof ever that was ever introduced
14 that was -- that there was ever any allegations that anything
15 happened when she was 10 years old. It's quite the contrary.
16 What Elizabeth Chesebro asks her during that interview when
17 you were 9 or 10 your mom let you do your own thing? Oh,
18 yeah. Right before my 12th birthday, that's the same time
19 it started happening with George Lang. George Lang can't
20 defend himself, he's dead. There's two phantom people she
21 made up that she can't describe because she doesn't want to
22 get confused. That's why they're not at defense table.

23 Miro Lovric in his closing is talking about
24 some phantom phone call between Linda and Dean after the
25 phone call's disconnected from the Norwich Police Department.

1 Linda doesn't have a clue what's going on. She has no idea.
2 She's trying to act like there's some cover up going on
3 between Linda and Dean. That's just incredible. It
4 absolutely makes no sense. Dean is a smooth talking
5 intelligent individual and you know where the proof is in
6 that? He befriended an Assistant US Attorney who came into
7 this courtroom and testified he went to wine parties with
8 him, he went working out with him, that he sparred with him.
9 If he can't figure it out, how is somebody like Linda
10 O'Connor going to figure it out who we've heard the proof
11 suggest is intellectually limited. No one said she was
12 insane. She's intellectually limited. She collects
13 disability. She had brain surgery. Nobody says that she's
14 mentally ill. There was no testimony about that. Now, if an
15 Assistant US Attorney can't read between the lines, how is
16 Linda O'Connor supposed to? This is a guy that was reading
17 the paper supposedly while he's on the subway. Oh, geez, the
18 guy I work out with is charged with sex offenses against a
19 minor. I think I need to call someone up. He had no idea up
20 to that point. That's the impression that I got.

21 Mr. DiFiori, what he testified to was criminal
22 in this courtroom because that is absolutely one hundred
23 percent a crock. He doesn't tell his wife who he supposedly
24 is very close to. We all know who we tell people we're close
25 to, who we are intimate with, who we tell things that are

1 important. Even if you want to believe he wouldn't tell the
2 FBI agent something of that magnitude, he would tell his
3 wife. We called him on the phone and my investigator
4 recorded him. I wasn't even going to talk to the guy. I
5 read the reports, he didn't know anything. Luckily, thank
6 God, we did because you kind of got the sense -- I don't know
7 if he was afraid. It seemed to me like he wanted to feel
8 important. He's standing in the Federal Building, maybe they
9 weren't even going to call him as a witness, then he came up
10 with I read some articles in the paper. I see what he's
11 charged with now. He said he had sex with a minor who was a
12 prostitute. That flies in the face of the letter that Mr.
13 Sacco sent to William Sorvino where he says he, you know,
14 took a chance and fell in love with a girl. That doesn't
15 sound like somebody who said anything about a prostitute.
16 The letter to William Sorvino is critical because it talks
17 about the charges resulting from my tenants downstairs. You
18 don't think Linda was upset when she heard about what Shannon
19 had said was happening. She went right down to the YMCA.
20 You heard the individuals talk about how upset she was. This
21 was not taken lightly by Linda. Think about not being able
22 to comfort your daughter when you know something like that
23 happened. She wasn't even allowed to talk about it. She was
24 precluded from talking about it. So she's intellectually
25 limited. She's precluded from talking to her daughter. What

Summation - Ms. Peebles

2347

1 impression do you think Shannon might have taken away from
2 that? My mom doesn't care.

3 Langs, I guess what the government's trying to
4 insinuate, oh, the Langs let them stay in their single-wide
5 trailer. She was living it up in Nineveh. She was, you
6 know, letting George Lang have sex with her daughter. That
7 is insane. They're in a single-wide trailer up Nineveh. If
8 Linda borrowed any money, the records show -- same records
9 government introduced -- Linda had to pay them back. Linda
10 had to write a check for \$100. Linda had to write a check
11 for \$40. They weren't giving her money. They weren't giving
12 her some pie in the sky life in Nineveh, New York. They
13 didn't have family. Linda and Shannon didn't have family.
14 They counted on the Langs. They were like Grandma and
15 Grandpa. That was her family, that's what the proof shows.

16 I don't even think we need to address the
17 rent. The proof is in evidence. The rent has always been
18 paid. I don't even know how this could have started, other
19 than a rumor, maybe Kathy Myrick, somebody Linda thought was
20 her friend. Imagine that. The proof with regard to any rent
21 payments is in evidence. Every month is covered. It makes
22 absolutely no sense that if Linda didn't have the money on
23 December 1 because she blew it at the Best Western on her
24 daughter, if she didn't have the money on December 1 -- Dean
25 was calling on the 6th and claiming and then threatening to

1 evict Linda and Shannon. That makes no sense. When you look
2 at the records with Delaware Opportunities, Norwich house,
3 Linda started in December making calls to get the HUD
4 assistance. That was already in the works. Her rent was
5 down to \$113 a month. If you look at the January money
6 order, it's absolutely critical. Dean puts on there, you owe
7 me \$300 for January back rent. Why would he be putting that
8 on the money order if he had some working thing going with
9 Linda concerning sex with Shannon? It absolutely makes no
10 sense. It makes no sense. I think if Linda thought he was
11 having sex with Shannon, that Linda would probably be owning
12 the house on 45 Fair Street, not paying Dean Sacco rent.

13 The phone call from March 15, no matter what
14 the government says, that cannot be changed. It is what it
15 is. Dean Sacco pleading for Shannon not to say anything.
16 Begging. He is pulling out all the stops. All the stops.
17 He knows how close Linda is with Shannon at that time. How
18 close Shannon is with Linda. Not once not once does he say
19 your mother's going to get in trouble. Your mother knew.
20 Not once. You better be careful, your mom's going to get in
21 trouble. That's not said and that's critical. He is
22 literally pulling out all the stops. The only time Linda's
23 name gets mentioned, if your mom can help you or the social
24 worker, he puts her in the same sentence as a social worker.
25 The March 15 phone call is absolutely critical. And the

Summation - Ms. Peebles

2349

1 videos, if you ever need to have the videos replayed, we have
2 transcripts for both the October and the December interviews.
3 It's what she said. It's what she said the first time.

4 The government has words and they have words
5 that will never come close to matching the realities. Like I
6 said, I don't think I ever could do justice in describing
7 what Mrs. O'Connor has to go through. I have to say I am
8 honored and proud to be her spokesperson in this case. I
9 stand humbly before each and every one of you and I ask you
10 to return a little bit of dignity, whatever she has left, and
11 find her not guilty.

12 Thank you.

13 THE COURT: Thank you, Miss Peebles.

14 We're going to take a break for lunch, ladies
15 and gentlemen. It's just about 12:30. We'll see you back at
16 1:30.

17 (Jury excused)

18 (Lunch break taken)

19 (Jury present)

20 THE COURT: Okay. Mr. Lovric, are you ready
21 to address the jury with your rebuttal?

22 MR. LOVRIC: Yes, Judge.

23 THE COURT: You may do that at this time.

24 MR. LOVRIC: Good afternoon. Hope you had a
25 good lunch. But I'm going to get right to the point. I

1 think I told you early on, I get to the point, and I don't
2 think you have any difficulty understanding where I'm coming
3 from and what my thinking and what my point is.

4 I find it best to be very direct with people.
5 I like doing business that way. I've been doing it for 23
6 years now, and it works just fine for me.

7 Let me start first by addressing something
8 that Mr. Fischer talked about at the very end. What Mr.
9 Fischer said to you regarding assistant US Attorney Lurie and
10 myself and Agent Lyons, I submit to you he should be ashamed
11 of. Now I'll say it directly to him: He should be ashamed
12 of. He basically said to you that AUSA Lurie came up here
13 and lied, and then Mr. Fischer argued just a few minutes ago
14 to you that Mr. Lori gave him, Mr. Fischer, the ammunition or
15 the tools by which to impugn my integrity and my motivations
16 and why I'm doing this case and what I'm looking to do.

17 Let me tell you a little bit about what I'm
18 doing here. I've been a prosecutor for 23 years, 15 years of
19 those in Binghamton, 8 of those in New York City. I'm not
20 going anywhere. Forty-eight years old, I'm not making
21 millions of dollars like some attorneys out in private
22 practice. I never will. I think after 23 years of doing
23 this, I know where I'm going and where I'm not going, and one
24 of the things that I'm not about is where I am in my life in
25 terms of status. I do this job because I love this job. I

1 do this because I believe it's the right thing to do. I have
2 no problem standing in front of you and telling you that I am
3 very proud to represent the Shannon O'Connors of the world.
4 I have no problem justifying what cases I prosecute and what
5 cases I bring before you. Are these cases that I go out or
6 Agent Lyons goes out and any other investigator and we pick
7 and choose and we pick and choose our evidence? No. I think
8 you've probably figured it out by now, these things do not
9 come in with a little bow on them, perfectly packaged and
10 everything fits nicely and everything that you have as far as
11 evidence lines up. That's not the real world of criminal
12 justice. The defense would like you to think that. They'd
13 like you to think that everything has to be all lined up.
14 Everything has to match. It has to be tied with a nice red
15 ribbon on the card and the box has to say "Guilty." Well,
16 I've got news for you folks. This is not CSI. This is not
17 Law & Order. This is the real world. This is how cases
18 develop out there. This is how crimes happen. And this is
19 how criminals engage in activities. And what happens at the
20 end of it all is an Agent Lyons or Investigator Blenis or an
21 AUSA Lovric out there in the world gets this thing, the way
22 it was left for them to get.

23 Mr. Fischer would like you to believe that I'm
24 a part of the conspiracy. I'm one of those liars. Agent
25 Lyons is one of those liars. We're all doing that. That's

1 essentially what he said to you. That I coached Shannon.
2 Agent Lyons coached Shannon. Agent Lyons coached DiFiori.
3 That's what he wants you to believe. That's what he says is
4 happening in this case. Well, I'm going to tell you a couple
5 of things and I want to bring some information to your
6 attention and then you ask yourselves, who's really playing
7 games with you and who are the game players and who are the
8 people trying to pull things over your eyes?

9 Mr. Fischer talked about the DNA. Agent Lyons
10 was on the stand, and it was Mr. Fischer that brought out
11 through Agent Lyons that the DNA was tested on the condom and
12 Shannon's DNA that was sent. Mr. Fischer and Mr. Sacco were
13 asked to provide a sample. Agent Lyons told you that. We
14 asked them, you want to give us a sample buccal swab just
15 like Shannon, we'll send it up to the lab and Andrea Lester
16 will send you a copy of the report like she does us? We
17 asked him that. Do you remember what Agent Lyons said their
18 response to that was? No way. It is disingenuous of Mr.
19 Fischer to stand in front of you on his summation and say the
20 government chose not to do a DNA test on Sacco. That is
21 disingenuous. Now, I could care less whether he wants to or
22 didn't want to provide a DNA sample or what his reasoning
23 was. That is disingenuous to try and hoodwink you folks into
24 thinking we didn't care about giving him the chance to have
25 his DNA tested. You can go back and have that reread on

1 cross-examination of Agent Lyons, and that's what Mr. Fischer
2 asked him and Agent Lyons told him that. I don't know if he
3 thinks that you guys have a memory span of a week or a day,
4 but I remember that, and if you don't, have it read back to
5 you by Vicky. So when he says that we didn't care, you ask
6 yourself, who's playing games in this courtroom?

7 Now on top of that, I told you in opening,
8 Andrea Lester told you as well, the only thing that she could
9 tell you if she had the DNA of the male contributor is they
10 could be either included in the pool of millions of people or
11 excluded. That's the science of it. Based on that mixture
12 and how the DNA mixed with Shannon's. But I'm going -- I
13 don't know that. He had the opportunity to provide it. Why
14 do you think Mr. Sacco said no way? I don't think I need to
15 tell you that. And all this baloney --

16 MR. FISCHER: Your Honor, at this point I do
17 have an objection with respect to invoking certain rights
18 that Mr. Sacco has.

19 THE COURT: Well, Mr. Sacco has the right to
20 remain silent. He doesn't have to furnish any evidence if he
21 chooses not to.

22 MR. FISCHER: Exactly.

23 THE COURT: That's what you want me to say?

24 MR. FISCHER: Yes, your Honor, that's my
25 request.

1 THE COURT: Okay.

2 MR. LOVRIC: And all this baloney about the
3 condom in unit 129, Mr. Fischer would like you to believe --
4 let me see if I get this right -- Shannon planted the condom.
5 I had to pinch myself because I thought I was still sleeping.
6 Shannon thought all the way in advance, if some day I need to
7 do something to Mr. Sacco, I need to use that mechanical
8 penis that George bought for my mother, and I need to break
9 and tear my hymen because I do know that a broken and torn
10 hymen shows sexual intercourse. After I do that, I need to
11 take that condom off the mechanical vibrator that my mother
12 used and then I have to roll it back the same way because
13 Andrea Lester's going to know I rolled it back the wrong way,
14 it was taken off the wrong way. And then Shannon thought
15 ahead of time, months, I need to put this somewhere where it
16 will implicate Mr. Sacco when, down the road, I go to do
17 something to him, like frame him or make some allegation.
18 And so I'm going to put it in his dresser in a box with
19 envelopes and let it sit there until the time is right. That
20 is stupid. I'm sorry. I can't put it any other way. That
21 is the stupidest argument I've heard in my 23 years of being
22 in a courtroom. I'm sorry. I'm sorry. You have to be an
23 imbecile to come up with that argument. I can't put it any
24 other way. And I am being blunt.

25 I told you before, this defense has gone back

1 and forth from Shannon is a blubbering mental incompetent to
2 she is Einstein. Well, Mr. Fischer just tried to pull one
3 over on you and tell you she's Einstein. She thought of this
4 all ahead of time. She planted that condom. Couple days
5 ago, Shannon was a mental incompetent, and I submit to you
6 what I said to you in my direct or my first summation to you,
7 they are playing it both ways. They don't really care what
8 you buy. They don't care if you believe one story or the
9 other, half one or another. They could care less. But
10 you're being fed inconsistent theories. You're being fed
11 inconsistent arguments by the defense. What does that tell
12 you?

13 Exhibit 40. Mr. Fischer spent a lot of time
14 on Exhibit 40. And he's dead wrong about the entire time he
15 spent on it. Pull out Exhibit 40. I'm not going to do it
16 here for you. Dean Sacco, after he writes in his journal
17 that he has a conversation with the Thai, T-H-A-I, guy, Mr.
18 Sacco gets this brochure in 2004. Now, yesterday -- excuse
19 me -- well, it was yesterday. Mr. Fischer wanted you to
20 believe that the journal entries that Mr. Sacco made in 2002,
21 that they were the old Sacco. He's done being a child
22 predator. In 2002 he realized what he is and he's done with
23 it. Well, that brochure comes to him in 2004, two years
24 later. What's the answer to that, Mr. Fischer? Oh, he
25 forgot to check the dates. That brochure is evidence to you

1 of Mr. Sacco's propensity of being a sexual offender, and you
2 can use it as such. You can consider that as evidence that
3 he has a propensity to engage in sex with minors and to seek
4 out minors. What better evidence than he's getting a
5 brochure to go to Thailand, Philippines and Cambodia to have
6 sex with young girls? Take a look at that picture. It's
7 like a 13-year-old girl in the picture and she's standing
8 there with this pose naked. I mean, come on. You gotta be
9 kidding me. I can't even believe we're arguing over this
10 brochure. Is it child porn? Absolutely. Mr. Fischer says
11 wrong. Well, I've got news for you. You're dead wrong.
12 He'd like it not to be child porn but it is. You look at it.

13 Interstate commerce travel. I said this to
14 you last time. Dean Sacco barely sets foot in Norwich,
15 New York from the time he buys the house up until August 22
16 of 2006. You can look at all the records that are in there.
17 You can look at his bank card records. You can look at
18 whatever is in there. He barely comes to Norwich, New York.
19 And when does he start? And not only start but it's almost
20 every several days he's coming up to Norwich.

21 Take a look at his Y records, Exhibit 13.
22 When does he join the Y? September of '06. Not in '05 when
23 he bought the house. When does he start coming to the Y?
24 September 13, September 16, September 20, September 23,
25 October 4, October 5, October 7, October 9, October 10,

1 twice, October 11, October 12, October 14, October 18,
2 October 19, October 21, October 25 -- I'm not going to say
3 the word October -- 26, 28, November 4, 6, 11, 18, 25,
4 December 3, 9, 22, 23, 24, January, and on and on it goes.
5 He's in Norwich almost every other day, every third day. Oh,
6 I see. Mr. Fischer wants you to believe he's working on the
7 house. Baloney. He's found himself a child that he has
8 complete access to. He can have her any time he wants when
9 he is up there.

10 What he's doing with Shannon and what he's
11 doing with Linda O'Connor. Now, the Judge will tell you
12 about this interstate travel. Listen to the Judge's
13 instruction. With all due respect, with no respect to Mr.
14 Fischer, Mr. Fischer doesn't know what he's talking about
15 when federal law is concerned. The travel does not have to
16 be solely for the purpose of engaging in sex or to try to
17 engage in sex with a minor. It simply has to be one of the
18 reasons he came up. Listen to the Judge's instruction. And
19 I have a suggestion, if you have any question on the law, ask
20 that man, not that man (indicating).

21 And I have a couple other examples, and what I
22 want you to ask yourself is, is Mr. Fischer misstating
23 intentionally or unintentionally? Well, maybe the number of
24 times that I point out to you will help you answer that
25 question.

1 Videotapes are found in New Jersey. Mr.
2 Fischer on his summation said that I said or I claimed that
3 Sacco drove up from Jersey, picked up the videotapes, left
4 the cameras, took the videotapes back, and that's where they
5 were found because he didn't want them to be found. I think
6 Mr. Fischer's having hallucinations. What I said to you and
7 what I'm saying to you is, the videotapes, part of what you
8 saw were found in New Jersey. Mr. Sorvino gathered those
9 things up in his work area, Mr. Sacco's. He then put them in
10 his garage, as he told you. Agent Lyons recovers those
11 8-millimeter videotapes. They are all in New Jersey. My
12 point was -- and I was being sarcastic -- how is it that
13 every videotape is found in New Jersey? Not in Norwich; in
14 New Jersey. They're all down there. And amongst all the
15 videotapes in New Jersey, there is none of Norwich, yet the
16 camera is in Norwich. That's what I was trying to get across
17 to you. I think you guys got it. I don't think Mr. Fischer
18 did. The camera's in Norwich. Sacco, as I said before,
19 videotapes himself doing everything, and is it a coincidence
20 that no Norwich videotapes were found down in New Jersey?
21 And I submit to you, no. He got rid of the Norwich, New
22 Jersey videotapes that he had in New Jersey. He didn't leave
23 those things up here. He took them home to enjoy them in the
24 privacy of wherever the heck he lived at the time. But
25 that's why you don't find and we don't find those videos.

1 Because between the 15th and the 18th, when he talks to
2 DiFiori, he gets rid of the Norwich videotapes. He leaves
3 the cameras up there. He doesn't think the cameras are going
4 to be any value to anybody even if they find them.

5 Now, another point in cross-examination of
6 DiFiori, Mr. Fischer, not me, Mr. Fischer got Mr. DiFiori
7 talking about, and I think it was something about why he had
8 Mr. Sacco move from one building to another that he owned,
9 and Mr. DiFiori started to tell you about Mr. Sacco's
10 background. Do you remember that? If you don't, have it
11 read back to you, do me a favor, because I am a little tired
12 of this selective game of facts being played. But DiFiori
13 starts to tell Mr. Fischer and in fact he starts to tell him
14 why he's scared of Sacco. Now, Mr. Fischer brought out
15 through Agent Lyons that Sacco spent time in state prison.
16 But he cuts off DiFiori when DiFiori wants to tell you why
17 he's afraid of Sacco. And ask yourself this question: Do
18 you think Mr. DiFiori knows that Mr. Sacco spent time in
19 state prison? Do you think that might be why he's also
20 scared of Mr. Sacco and not too thrilled about saying, this
21 guy told me what he did but I don't really want to get
22 involved? You know what Mr. Fischer says to you? This was
23 all late. I don't frankly care if he threw me in. This was
24 all Agent Lyons getting DiFiori to make this up before he
25 enters the courtroom. That was a bunch of baloney. It was

1 Mr. DiFiori, when the time comes, sitting -- coming up from
2 New Jersey, knows he's going to testify, he finally -- he
3 knows he's under oath, he's going to have to tell everything
4 he knows. It would have been great if he told the agent when
5 they visited him. But does that mean he's making it up?
6 First of all, why say it five, ten minutes before you walk
7 into the courtroom? You know why. Because he knows he's
8 going to have to swear under oath and tell everything he
9 knows. And he finally comes clean with that. They would
10 like you to think we all made it up. Yes. Agent Lyons and I
11 sat down and I told Jim Lyons, go over there and tell
12 Mr. DiFiori that he needs to say the following things.
13 That's what they're saying happened.

14 The marijuana. Mr. Fischer talks about
15 marijuana that is mentioned by Shannon and by DiFiori. The
16 only people that ever asked anybody about marijuana is Mr.
17 Fischer. He asked Amanda Rising and I believe Mr. DiFiori
18 about marijuana usage at one of their barbecues. He admitted
19 it, yeah, people used marijuana there. Then it was Mr.
20 Fischer that asked Shannon, isn't it a fact that on one of
21 those occasions after Dean had sex with you that he provided
22 marijuana to you? And she said yes. He brings it up and
23 then he doesn't like the answer and he says they're making it
24 up. He's the one asking the questions. I didn't ask Shannon
25 about marijuana, I didn't ask DiFiori or Amanda Rising about

1 marijuana. I'm not quite sure why he's doing this. He wants
2 to make it sound like people are making something up that he
3 just asked of them. He's the one asking them and eliciting
4 the information from them, I'm not. How is that Agent Lyons
5 and me coaching witnesses what to say? I'm sorry, but I
6 don't follow that logic.

7 Mr. Fischer twice on summation and at least
8 one time during the case got this fact dead wrong and
9 repeatedly kept doing it. You can answer your question
10 whether he did it intentionally or unintentionally. During
11 cross-examination of Shannon he at one point -- I'm going to
12 ask all of you to picture Shannon sitting there, and here's
13 my first point about that. There were several occasions,
14 several occasions, numerous, in my view, occasions when Mr.
15 Fischer asked Shannon a question and gave her wrong dates,
16 wrong information in the question, and Shannon actually had
17 the wherewithal to correct him. On one occasion he's giving
18 her a date of when sex occurred upstairs, in the upstairs
19 apartment, and he is telling her it was Christmas rather on
20 her birthday around Christmas. She says, no, that was the
21 time before Christmas when the Parmalees stopped over. On
22 another occasion he's feeding her the wrong date when she
23 provided information to Liz Chesebro and Detective Blenis on
24 October 29 and she corrects him again. And it happens
25 several more times when he was cross-examining her. Slip of

1 the tongue? Or is he playing games and trying to get Shannon
2 tripped up? You be the judge of that.

3 On summation he said the first disclosure
4 about the mother, Linda O'Connor -- and this is what he told
5 you just a couple hours ago -- the first disclosure about the
6 mother being involved and the photographing he said to you
7 occurred on December 5 of 2007. Wrong. You can look at
8 Exhibit 106. 10/25/2007 interview of Shannon when Shannon
9 discloses that her mom -- Shannon reported her mom and
10 photographs were involved with the time Dean sexually abused
11 her which she had not disclosed before, and then she goes on
12 to describe how mom was taking pictures downstairs as Dean
13 raped her. He has done that three times by my count, trying
14 to get you to believe that the first time she says anything
15 about Linda O'Connor being involved is the December 5
16 interview. It's just dead wrong. It's in the DSS records.
17 Liz Chesebro testified about it. And you know what, please
18 watch those videos again. Watch that October 25 video, and
19 you'll hear her tell them again that the first time her
20 mom -- that she says that was the first time being
21 involved -- in that October 25 interview.

22 I submit to you, you know, I was sitting there
23 listening to defendant Sacco's summation and, you know, he
24 can't -- they can't even come out and admit -- you know, on
25 the one hand Mr. Fischer says that videotape of Mary, the

1 little video clip that you see, he says something like it's
2 damning and it shows intent, and then when he's talking about
3 Mr. Sacco's character and propensity, he says he had some
4 proclivity and problems, sexual problems. We agree on that.
5 And then he said Mr. Sacco did not hide that propensity. You
6 know, they can't even come out and say he had sex with
7 Shannon. Instead, this is a statutory rape matter. I mean,
8 it's just baloney. It's like what they want you to believe,
9 they can't come out and say it, because they'd like to have
10 all their options. They'd like to have their cake and eat it
11 too. They can't come out and say yes, Dean Sacco had sex
12 with Shannon multiple times and Shannon went upstairs for
13 him.

14 Let me do Mr. Sacco's summation for you. He
15 wants you to believe Dean had sex with Shannon, consensual
16 sex, Shannon snuck up there multiples times and they had sex,
17 she loved it, he loved it, they were happy as pigs in a
18 blanket, they were having the time of their life, and then
19 something happened where Shannon said: He raped me. That's
20 what his summation should have gone like. They can't come
21 out and say that. They don't want to give you anything. No,
22 he didn't really have sex, it was really a condom that
23 Shannon planted, and yeah, she was probably friendlier with
24 Sacco, it may seem, but you know what, Clesson could have
25 planted that condom or one of his sons or it was a mechanical

1 vibrator and Shannon to -- this is what they're doing to you.
2 This is what they're doing with you. And then they're
3 claiming that I and investigators are involved in framing
4 them. You ask yourself, who's playing games here?

5 Dr. Waters. I'll answer the question for you.
6 Mr. Fischer, we didn't call Dr. Waters. In my opening I said
7 I would. I did; I told you that. If you remember, Mr.
8 Fischer put Defense Exhibit Number 13, Sacco, into evidence.
9 It's Dr. Waters' report. He did this either with the first
10 or second witness. I don't recall, to be honest with you.
11 But it came out of the blue, and I was like, I don't even
12 think the witness knew what they were talking about. I was
13 going to call Dr. Waters to put this report in. Mr. Fischer
14 put it in light years before I even had Dr. Waters scheduled.
15 After he put this in, I didn't need to call Dr. Waters. This
16 is my whole point of calling him. Do you think Dr. Waters
17 remembers one exam out of 50 billion that he does? He would
18 have read this report to you and said, this is what I did,
19 this is what I found, these were my findings. That was my
20 point of calling him. Once Mr. Fischer put this in, if you
21 noticed, I didn't object. I was just stunned he's putting
22 this report in. So I don't need to call Dr. Waters. I'm
23 going to take an ER doctor out for a whole day, have him sit
24 here to do what, read you a report? I can do that.

25 And while we're on the topic, let's do it.

1 Page 4. "Patient states five encounters, first in August
2 assailant had vaginal intercourse on the couch. Has had five
3 encounters and at least one oral. No physical violence."
4 She didn't tell them that Sacco did anything violent to her.
5 She's never said he did anything violent to her. He slapped
6 her across the face on one occasion, but it's not like he
7 forced her and held her down. She's never claimed that.
8 She's never said that he beat her. He threatened her. But
9 assailant told patient -- Read this. But assailant told --
10 assailant is Sacco, by the way. "Assailant told patient her
11 mother would go to jail and she would go to foster care."

12 Next, page 5. "Abnormal genital inspection.
13 Completely torn hymen. Clinical impression: Sexual
14 assault." That's all I was going to call Dr. Waters for.
15 And if you remember in my opening, that's what I told you.
16 Mr. Fischer wants to make it sound sinister, like I didn't
17 call him because there was some -- something that he's going
18 to tell you that somehow negates everything. Why didn't he
19 call him? They called everybody he wanted to. He has no
20 obligation to, but if there's something sinister out there
21 with Dr. Waters, why didn't he call him? I didn't need to.
22 I got his report in.

23 The video camera Mr. Fischer spent some time
24 talking to you about in the course of telling you that I
25 suggested to Shannon or Agent Lyons to identify the video

1 camera. Okay. Shannon told you this camera was used on the
2 last occasion that Dean Sacco raped her. Did you notice
3 nobody's really talking about this camera much? Government
4 Exhibit 35, the Polaroid, which, by the way, so I can match
5 it up for you, this is the camera that Amanda Rising and
6 DiFiori talked about Dean at those barbecues, he would be out
7 there with his Polaroid, taking pictures of people. Did you
8 notice Shannon didn't identify this to you? They would like
9 you to believe that Shannon makes this stuff up as she goes
10 along. When I show her the cameras, she identifies this one
11 but not this one. Why not do both? If you're making it up
12 as you go along, yeah, both cameras, Sacco had both of them,
13 sure. Yeah, he used both of them on me. She never said he
14 used this camera. The defense would like you to think
15 Shannon just threw people under the bus whenever she felt
16 like it, that she just made stuff up. She wants to make
17 stuff up about her mother? Why not put her mother there on
18 every rape? Why not put her mother there on every single
19 time taking pictures? Why not put it, yeah, they were both
20 together all the time? They took pictures of me, she was
21 with the camera, he was engaging in sex with me. Why not
22 just throw it all in? You're going to make stuff up. It's
23 easy, according to them. She's just making it up.

24 You know what you saw in this case
25 essentially, ladies and gentlemen? And I said this before

1 when I went through the blame game. Every time somebody had
2 evidence to offer against O'Connor or Sacco, they attacked
3 them. They've now stooped to attacking me personally and
4 Agent Lyons. I'm surprised they didn't go to look for my
5 MySpace account. They'll find I didn't have one. I'm
6 surprised they didn't call my wife, who will gladly tell them
7 all the crap I did in my life. That's what it boils down to.
8 Look at the character assassination.

9 You saw Liz Chesebro trying to do her job.
10 Did she make a mistake by giving Shannon her MySpace?
11 Absolutely. Which one of us doesn't think that was a
12 mistake? No, it has to be more sinister than that. Every
13 single witness, Naomi, Liz Chesebro, they personally went
14 after.

15 DiFiori, Mr. Fischer wants you to think he's
16 an illegal immigrant without a green card. Oh, yes, I see,
17 the government's going to let him stay here. You know what,
18 this is bunch of garbage. It's unbelievable how low they
19 stooped. Character assassination, one person after another.
20 Anyone that had anything to offer as far as evidence was
21 assassinated here. They're a liar. They're fabricating. I
22 can't remember the word he used, I missed that one on the
23 SATs, but everybody's a liar and it's a fabrication. If it
24 hurts them, it's all fabricated.

25 I called Jim Parmalee to testify. Don't you

1 think I knew what Jim Parmalee was going to tell you? Jim
2 Parmalee and Shannon's accounts of what happened are
3 completely at odds. I wanted you to hear Jim Parmalee tell
4 you what he remembered and being there and coming there, even
5 though it's not matched up to Shannon. What does that tell
6 you? They would like you to think on the one hand that the
7 government is out there making all this fit. We're coaching
8 Shannon. We're coaching witnesses. We're giving them
9 information on how to make it all fit. Parmalee, a perfect
10 example how it doesn't fit. What it means is another thing.
11 Jim Parmalee, nice guy. He remembers going over there.
12 Shannon was out that week, Brooke wanted to see her. They
13 stopped by. He knocks, Linda tells him to go over here. He
14 knocks, knocks, knocks, waits, waits, waits, Shannon comes
15 down. Shannon tells you her mother comes running up, telling
16 her Brooke's here with her father, to get downstairs. I
17 don't know which memory is correct. I really don't. I asked
18 Shannon, I didn't tell her what Jim Parmalee said. I simply
19 asked her, tell me about what you remember. I asked Jim
20 Parmalee. I didn't tell him what Shannon remembered. That's
21 the way life is. Is there any doubt that Parmalee went there
22 with his daughter to see Shannon? No. Whether Sacco came
23 down or not, whether O'Connor ran up the back stairwell, the
24 other entrance, that's why I did that stuff for you.
25 Upstairs, 1, 2, 3, 4, 5, you can take a look at it. It's

1 different ways that she could have gone upstairs without
2 being seen or not. I don't know which memory is correct.
3 Are they lying? I don't think so. You think Jim Parmalee's
4 going to get up here and lie to you? Why would Shannon lie
5 to you if she knows that Jim Parmalee doesn't remember the
6 same thing she does? She would change her story. But no,
7 they want you to believe there's sinister things going on.

8 Hamilton. I'm going to say this once, I'm
9 going to say it clearly. Kim Hamilton had an ax to grind.
10 What happened? And this is me submitting to you what
11 occurred. Mandy, 16 years old at the time, made a false
12 allegation against a 20-year-old guy, that he had raped her.
13 Within two days Investigator Blenis determines that is a
14 false allegation and Mandy admits its false. And Mandy
15 confesses it's a false allegation. What happens,
16 Investigator Blenis arrests her. You know what, Kim Hamilton
17 to this day is PO'd about that. Her daughter got arrested
18 and she is ticked because she doesn't think she should have
19 been arrested. Maybe she should have gotten counseling,
20 maybe a talk over, but she is ticked what Investigator Blenis
21 did. She is ticked at how DSS worked Shannon O'Connor's case
22 and how Greater Binghamton did. You know what, I found it
23 interesting that she said -- I forget the words exactly. I
24 asked her something to the effect, what gives you the
25 expertise, and she says, well, I'm an expert foster care mom

1 or an expert parent. You know what, with all due respect to
2 her, she thinks she knows better than everybody. And what I
3 submit to you happened here was, she came in and she skewed
4 that whole thing about Mandy and the other kids making this
5 false allegation against her. It was Mandy's idea, Mandy put
6 Shannon up to it, and Shannon did it because Shannon will go
7 along with the kids when they're trying to do something and
8 so Mandy was the instigator, but Kim here switched that
9 around. And that's what happened. And that's why I went in
10 some length with her about her motivations, because I figured
11 out quickly, this person has an ax to grind. There's
12 something that's ticking her off. And she's now taking those
13 facts and turning them sideways because she can. Mr. Fischer
14 said that he's a manipulator. I'm not saying that, he said
15 that, so I don't get accused again. I can't remember if he
16 invoked Miss Peebles or not. I'm not going to invoke her
17 name. But he did invoke my name. With all due respect to
18 everybody seated over there, I don't put myself in the
19 manipulator category.

20 I'm here because I believe the facts and the
21 evidence. Now, I don't make the decisions, but I'm not here
22 to manipulate anybody. I'm here to show you and to try to
23 demonstrate to you what the facts are. I collect them as I
24 find them. I collect people as I find them. Agent Lyons
25 gets people as he finds them. You can't make people

1 something they're not and you can't put evidence where there
2 isn't and you can't change evidence. But I'm not a
3 manipulator, and I'm not going to sit here and put myself in
4 that group.

5 The boiler, I submit to you this was another
6 little hoodwink. Take a look at Sacco's bank records. It's
7 here. Exhibit 85 or 86. It's the card he uses, bank card,
8 when he's in Norwich. In January of '07 he pays a plumber
9 \$500 for a boiler. Mr. Fischer has that receipt, which I
10 have no objection to. It's a water heater boiler. It's \$500
11 for a water boiler, the thing that heats your water when you
12 want hot water in the shower. It's not the gas furnace. And
13 in fact, the furnace is what Zaid Kurdieh I believe talked
14 about was delivered on a big truck, on a big pallet to his
15 place where Mr. Sacco was working. And oh, by the way, he
16 was working there in the fall of '06, not in the spring of
17 '07, and it was that that was replaced because the Pipers
18 left, as it was too cold upstairs. Now what's the point of
19 this? This is a minor point but it's a major issue. Mr.
20 Fischer would like you to believe that Sacco could not have
21 been naked upstairs having sex with Shannon in the fall of
22 '06 because it was too cold because the furnace wasn't
23 working, so he puts this bill in for \$500 for a water boiler.
24 One problem, it's the water boiler, not the gas furnace. And
25 second problem, Kurdieh testified that when Sacco's working

1 there, the furnace was delivered, and he helped bring it over
2 to Sacco's place, and that all takes place in the fall of
3 2006, not in the spring of 2007. Who's playing games here?

4 Schoolteacher disclosure. Mr. Fischer got it
5 wrong again. Liz Chesebro testified, but on summation we
6 just heard Lisa Peebles and Mr. Fischer say Shannon never
7 disclosed anything to the schoolteacher first. She did.

8 MISS PEEBLES: Objection. Misstates what I
9 said.

10 THE COURT: I'm sorry. I couldn't hear you.

11 MISS PEEBLES: Objection. That misstated what
12 I said.

13 THE COURT: Well, it's going to be up to the
14 jury to remember that. Whatever Miss Peebles said you can
15 remember, and now what Mr. Lovric is saying to you, if it's
16 different, you just have to make up your mind what happened.
17 Do the best you can.

18 MR. LOVRIC: Liz Chesebro testified on
19 March 2, she gets a call from the school. Shannon had
20 disclosed to a schoolteacher, and it's in her notes, and I
21 believe one of the attorneys read it, that the school called
22 to Liz Chesebro, said Shannon had disclosed to a
23 schoolteacher, either science or health class teacher, and
24 she asked her what happens if an older person has sex with a
25 younger person and the younger person doesn't say no. And

1 this is what caused the teacher to ask a question and realize
2 that she had sexual contact with an adult. It was the
3 schoolteacher. And the school then called Liz Chesebro and
4 Liz then went to Kim Hamilton's house, where she then
5 found -- Shannon came home, interviewed her, and that's when
6 she disclosed the rapes by O'Connor. Now on summation
7 somebody said -- I'm not going to accuse anybody. Somebody
8 said on summation -- it was one of the two attorneys, it
9 wasn't me -- that Shannon told Liz on the way home from
10 school for the first time that Sacco had sex with her.
11 That's false. That's a misstatement of fact.

12 The interstate commerce. The Judge will tell
13 you what the law is, but the other day when I was doing my
14 summation, I have a list of ten things, ten ways that this
15 federal -- these federal laws were violated on interstate
16 commerce. The first is, Sacco traveled from New Jersey into
17 New York. It's interstate travel, and he did that where one
18 of his purposes was to engage in sex or try to engage in sex
19 with Shannon. And again, you will see -- and if you have a
20 question, ask Judge McAvoy -- it's not even required he
21 actually engaged in sex, so long as he travels with that
22 intent and that's one of his purposes.

23 Affecting interstate commerce. Now Mr.
24 Fischer -- I forget the words he used. It was, if you
25 breathe interstate, it's a violation. Well, you know what,

1 folks, he may not like it, but that's essentially the way it
2 works. Federal statutes -- and if you have a question, ask
3 Judge McAvoy -- they require minimal interstate effect.
4 Minimal. Here are the ways that there was interstate
5 commerce being affected. Traveling across state lines, Mr.
6 Sacco. Any hotels paid for by Miss O'Connor. Making phone
7 calls across state lines. Using a bus company to travel,
8 even if it's within the state. Using a bank card across
9 state lines, to bring a bank card from New Jersey, use it in
10 New York State. Sending a money order back and forth. Miss
11 O'Connor sent at least one money order to Dean Sacco in March
12 of 2007.

13 While we're on that topic, Miss Peebles just
14 got done summing up to you and telling you that Miss O'Connor
15 sent Dean Sacco a money order in January of 2007. She said
16 January of 2007. Government Exhibit 77. And it's also in
17 the bank records. This money order is dated March 2, 2007.
18 This money order was sent to Dean Sacco in March of 2007, not
19 January of 2007. What's the significance of that that Miss
20 Peebles I suggest wanted you to think? Well, first of all,
21 she's trying to argue to you that Linda O'Connor was up to
22 date on paying her rent and rent payments. Right on this
23 money order it says it's a money order for \$113. Note on the
24 bottom says: Amount due \$300 for January. Linda O'Connor's
25 putting right here she still owes \$300 for January. She's

1 sending Mr. Sacco 113 in March. Who's playing games with
2 you?

3 Is there any question that Dean Sacco was not
4 getting paid his rent? Let me count all the ways that's been
5 shown. Dean Sacco himself complains that he's not getting
6 rent monies on time. Dean Sacco complains to Bill Sorvino
7 that his downstairs tenants are not paying him on time. Dean
8 Sacco explained to Mr. Kurdieh that testified who he works
9 for that he's not getting paid on time. Dean Sacco
10 complained to anybody and everybody that his downstairs
11 tenants were not paying.

12 Way number 7, interstate commerce: Using
13 internet to send e-mails or pictures. When Linda O'Connor or
14 George Lang are sending pictures and e-mails back and forth
15 to each other, that affects interstate commerce. Using
16 internet to make purchases online. Dean Sacco buying the
17 cameras, at least -- at least two of the cameras. Using the
18 internet to view or download child porn. Dean Sacco in his
19 journal was using the internet all the time.

20 The cameras that were transported across state
21 lines. Now this part, I mentioned it yesterday, but I wanted
22 to reemphasize again. These two cameras came from New
23 Jersey. How do you know? Well, Dean Sacco bought them on
24 eBay and had them shipped to New Jersey. They had to have
25 been brought from New Jersey to New York where they were

1 found. Dean Sacco also bought another camera on eBay, the
2 Fuji 1000 zoom lens camera. And that was also delivered to
3 New Jersey. And Dean Sacco in his journal writes about
4 searching and looking for a digital camera. Two of the four
5 cameras have been found and recovered. The other two
6 mentioned haven't. You know at least one other camera was in
7 Norwich because Dean Sacco in unit number 129 had pictures,
8 and I showed them to you during my summation the other day.
9 They're dated June 24, 2006 and they're pictures with a
10 camera, and neither of these two cameras made those pictures.
11 One is a Polaroid, this is a video camera, and those are
12 still photographs. So you know he had at least another
13 camera in Norwich that has never been recovered, either in
14 Norwich or anywhere else.

15 But the point of that is, you know that all
16 the cameras that he possessed have traveled in interstate
17 commerce. And then finally, as I told you, you can look on
18 the camera. They're both made out of -- not only out of the
19 state but out of the country.

20 I'm going to quickly move through and wrap up.
21 Miss Peebles' summation I found interesting. And the note I
22 wrote myself is: I guess -- this is what I wrote to myself:
23 I guess they think this is funny or entertaining. Miss
24 Peebles' summation went back again, and I can't figure out
25 which defense is using what defense at what time because they

1 use it all the time back and forth. Her defense, this
2 concocted story that she wrote, Miss Peebles, that is, that
3 Shannon is brilliant. Shannon put all this together.
4 Shannon concocted it all. Shannon did this all from scratch.
5 And the reason for that, Miss Peebles tells you, is for the
6 attention. For the attention. I cannot -- I cannot begin to
7 tell you how absurd that sounds. Whatever you may think of
8 Shannon, and Shannon has issues and Shannon does like
9 attention and Shannon does want attention, but the fact of
10 the matter is, today, as she testified, Shannon is going to
11 continue to tell the jury and to tell law enforcement about
12 all these horrific things that have happened to her, for
13 what? That's what I asked before. For a better life, as Mr.
14 Fischer put it. She has a better life now living in
15 residential home where it's locked up? It just makes no
16 sense.

17 And I go back to what I said to you yesterday.
18 Think to yourself about children that are sexually abused.
19 The defense would like you to believe that there's no
20 evidence other than Shannon in this case. Well, I submit to
21 you that if you think about it, this case, unlike most sexual
22 abuse or rape cases, has tons of evidence. What do you
23 usually think of when you think about a child disclosing
24 they've been raped by a parent or somebody else close to
25 them? What do you have? You have the child and you have the

1 accused. And that's it. That's usually all you have. Here,
2 as far as Mr. Sacco was concerned, I don't even want to
3 dignify the defense anymore because the evidence as to him is
4 overwhelming, as to what he is and what he did. But Linda
5 O'Connor, think about it. Sex abuse of Shannon took place in
6 the bedroom. Did you expect to get another witness to come
7 in and say, yeah, I was there, I watched? What are you going
8 to have? They would like you to think that you have to have
9 witnesses. You have to have somebody else that can support
10 Shannon. And I said this to you yesterday. You really do.
11 Renee Lang. She walked in on them. There is no logical,
12 rational explanation for what she saw. Now the defense is
13 saying she's lying. Mr. Fischer says she's thrilled to be
14 here and testify. Well, that's a copout. Yeah, everybody's
15 lying. Shannon's lying. Renee's lying. Everybody's lying
16 that has any evidence to offer. If you look at this case,
17 there is plenty of corroboration for what Shannon has told
18 you, and the defense would simply like you to ignore it and
19 just focus on Shannon.

20 The Best Western records. They claim that
21 I've walked away from them. Absolutely not. I don't believe
22 there's a whole lot there to argue over that. Shannon told
23 you she was taken to the Best Western in December and she
24 doesn't know the date. And here's the other thing. Shannon
25 told that to the police. You know what, Shannon's a kid.

1 They want you to think that Shannon knows all these pieces of
2 evidence that are going to be out there. But she told you it
3 happened and they dropped the dog off at the animal hospital
4 and she told you they went to the Best Western that weekend
5 and they went shopping. We found receipts that match that
6 weekend. Oh, Shannon knew that in advance that her mother's
7 going to keep those receipts. Just like Shannon, when she
8 talks about one of the rapes, tells you and told the
9 investigators that Sacco had on this cowboy hat. Oh, yeah,
10 she knew we were going to find a hat many months later. Oh,
11 yeah, she knew Sacco's wearing that hat in his book that
12 she's never heard of, but that's what they want you to
13 believe, that these are all things that she knew existed and
14 planted in her story.

15 The Best Western is not even an issue. The
16 fact of the matter is, hotel records show that Linda O'Connor
17 registered on December 1st, the day before she dropped off
18 the dog. Shannon told you what happened. Miss Peebles went
19 on and on how she can't describe who the men were. Do you
20 know what? Look at that December 5 tape again. Do me a
21 favor, look at it again and watch how descriptive she is.
22 They would like you to believe because on the stand now she's
23 not able to articulate everything that she's lying or --
24 excuse me -- look at those videotapes. And you know what,
25 look at them, please, do me a favor, watch those videos again

1 and watch her body language. Watch her demeanor. Does it
2 look like a manipulating person that's making things up?
3 Watch how she describes this stuff and ask yourself, is that
4 consistent with somebody who is really trying to say things
5 and is distraught over what happened?

6 On the one hand Miss Peebles wants you to
7 think Shannon was brilliant and wrote this book in her mind,
8 that she has now made these accusations. On the other hand,
9 I keep going back to the meds. Mr. Fischer, on his
10 summation, she's medicated; therefore, that's why she's
11 making this stuff up. And in the same breath, within a
12 minute, she says she wasn't on medication and she should have
13 been and that's why she's making it up. When she's with the
14 Hamiltons, she's not medicated. When she's at Greater
15 Binghamton, she's medicated. Which one is it? They don't
16 care which one it is.

17 Miss Peebles said it again. She said it
18 during examination of Shannon, she said it in summation. The
19 first call by Shannon to Dean Sacco -- I wrote it down -- she
20 says it was disconnected. False. Have Investigator Blenis'
21 testimony read back to you. Investigator Blenis said the
22 first call, they completed it, they were done with it, and
23 then he went to review it and then realized the machine
24 didn't record it, and that's when they made the second call,
25 and in the interim Dean Sacco called Linda O'Connor. It

1 wasn't disconnected.

2 What's the significance of that? They want
3 you to think this call was disconnected and then they sat
4 around for 25, 30 minutes strategizing with Shannon what else
5 she should do or what she'd do. And Investigator Blenis told
6 you just the opposite. They were done, they were packing up.
7 Goes to listen to the call, realizes it didn't record, and
8 they make the second call.

9 One final point about the call. March 15, I
10 believe it's March 15, during the conversation with Sacco he,
11 for a second time, when he's trying to convince Shannon not
12 to go to the police, tells her, your mom will help you, when
13 they're talking about the pregnancy test. And I go back to
14 what I told you yesterday. Dean and Linda O'Connor had
15 talked for six minutes on how Dean was going to handle
16 Shannon, and this is when he calls her immediately after
17 getting that first call on the 14th. And Dean says, your mom
18 will help -- can help you about the pregnancy test. And
19 earlier -- excuse me, the day before, he also told her, well,
20 your mom said she would help. That's within that first five
21 minutes that I played for you yesterday.

22 I'm going to sit down in a minute, and what I
23 want to leave you with is the following: Mrs. Peebles told
24 you about how she feels about representing her client. I'm
25 here to tell you that I have absolutely nothing to apologize

1 for and I am very proud to be here on behalf of Shannon
2 O'Connor. Kids like Shannon O'Connor should not have to
3 endure what these two people did to her. And Shannon
4 O'Connor has nobody in the world. The mother is sitting over
5 there. She's in a, if you want to call it, a system that is
6 left to deal with the remnants of children like her. She has
7 absolutely nothing. She has nobody. And she told you from
8 her own mouth what she feels today. She loves her mother but
9 hates what she did to her. We are here representing the
10 Shannons of the world. And when you go through and make
11 these decisions, think about how it is that children, like
12 Shannon, who are sexually abused, how is it they disclose
13 things and how is it they come around to finally telling
14 about their parent. When you step back from that, I will
15 submit that you will find that what Shannon has done
16 throughout this whole process is very consistent to a child
17 that's been raped and sexually abused by a parent, who feels
18 guilt for having engaged in this conduct with the parent.
19 Imagine how Shannon feels for having put up with two years of
20 engaging in sex with Linda O'Connor and how difficult that
21 was for her to come out and say. And it will explain to you
22 how these disclosures happened.

23 These two people did what they're charged
24 with. And now they're doing everything they can to wiggle
25 out of it. They've accused everybody that there is to

1 accuse. There's no one left to accuse in this case. They've
2 concocted every argument. They have twisted the facts.
3 They've manipulated the arguments. They have nothing else
4 left. They threw the kitchen sink at you, hoping you'll buy
5 something and hoping you'll let them off the hook. And I'm
6 here to ask you, don't let Dean Sacco and Linda O'Connor off
7 the hook just because they would like to think that
8 everything that Shannon says has to perfectly match up.
9 They're guilty with what they're charged with, and I'm asking
10 you to do your duty and find them so.

11 THE COURT: Okay. Thank you, Mr. Lovric.

12 All right. Ladies and gentlemen, we're going
13 to take a break, and after we come back I'll charge you on
14 the law.

15 (Jury excused)

16 (Short break taken)

17 (Jury present)

18 THE COURT: All right, ladies and gentlemen.
19 I know you're probably sick of being talked at, but I'm about
20 to talk at you for a period of time. I just want to say a
21 little bit about the construction of the charge before I give
22 it to you in the hopes it will make it easier for you to
23 follow.

24 It's divided up into parts. The first part
25 reminds you of some of the things I said back when we started

1 the case about the role of the Court and the jury. About the
2 kind of proof that you're allowed to consider. About
3 inferences that you may draw if you wish. I'm going to talk
4 to you about the burden of proof that the government has.
5 And then I'm going to give you a rather detailed charge
6 involving credibility or believability of witnesses. Things
7 that I hope will be of help to you when you undertake that
8 important, critical task. Then I have a few other things to
9 say about motive and intent and that really ends the first
10 part of the charge.

11 Moving on to the middle of the charge, the
12 second part, I detail for you the charges made by the
13 government. I'll read you each charge in the indictment as
14 we go through it one at a time, and after each charge, after
15 I read that to you, I'll tell you the statute that it
16 violates and how that statute reads and the part that you
17 have to consider.

18 Once I do that, once you've heard the charge
19 and the statute, I will break down the charge into elements
20 and tell you what elements you have to find before you can
21 consider guilt. And of course, each element must be found
22 beyond a reasonable doubt. And do that for each of the
23 counts in the indictment.

24 Then I move on to theory of liability which
25 the government asserts you can find guilt on. It's called

1 aiding and abetting, and you'll understand it when I talk
2 about it because it's not rocket science; it's just another
3 way the government believes it might be able to prove guilt.

4 Then I go into the last part of the charge,
5 which is very short. It tells you how you're to go back into
6 the jury room, organize yourselves, select a foreperson and
7 conduct your deliberations.

8 So with that, I'll begin. If you want me to
9 quit any time, just raise your hands, we'll do it, but I'll
10 have to start later.

11 All right. Now that you've heard the evidence
12 and the arguments of counsel, it's my duty to instruct you on
13 the law applicable to this case. It's your duty as jurors to
14 follow these instructions and to apply the rules of law I
15 give you to the facts that you find based upon the evidence
16 in the case. You're not to single out one instruction alone
17 as stating the law, but you must consider my instructions as
18 a whole. Also, you're not to be concerned with the wisdom of
19 any rule of law. Regardless of what you think the law ought
20 to be, it would be a violation of your sworn duty to base a
21 verdict on any other view of the law than that given in my
22 instructions. Similarly, it would be a violation of your
23 sworn duty, as judges of the facts, to base a verdict on
24 anything but the evidence in the case.

25 You have been chosen and sworn as jurors to

1 try the issues of fact presented by the allegations in the
2 indictment and the denial made by the not guilty pleas of
3 each defendant. You are to perform this duty without bias or
4 prejudice as to any party. You're not to consider any
5 party's race, religion, national origin, sex or age. The law
6 does not permit jurors to be governed by sympathy, prejudice
7 or public opinion. Both the accused and the public expect
8 that you'll carefully and impartially consider all the
9 evidence in the case, follow my instructions, and reach a
10 just verdict regardless of any consequences. Nothing said in
11 these instructions or said or done by me during the trial
12 should convey or suggest in any manner any intimation as to
13 what verdict I think you should return. Your verdict must be
14 based on your thoughts and deliberations concerning the
15 evidence before you and the facts you find from the evidence
16 and nothing else.

17 In this regard, during the course of the
18 trial, I occasionally asked a question of a witness in order
19 to bring out facts not then fully covered in the witness'
20 testimony. Do not assume that I hold any opinion on the
21 matters to which my questions may have related.

22 The law presumes a defendant to be innocent.
23 Thus, each defendant begins the trial with a clean slate.
24 And the law permits nothing but legal evidence presented to
25 the jury to be considered in support of any charge against

1 the accused. The accused must never be convicted on the
2 basis of conjecture or suspicion. It follows then that the
3 presumption of innocence alone is sufficient to acquit a
4 defendant. The government must prove a defendant's guilt and
5 it must prove that guilt beyond a reasonable doubt. The
6 burden of proving guilt beyond a reasonable doubt is an
7 important concept for you to understand and needs to be
8 explained a little further.

9 The burden of proving guilt beyond a
10 reasonable doubt is always on the government. The government
11 must prove beyond a reasonable doubt that a particular
12 defendant has committed every element of each offense
13 charged. The burden never shifts to a defendant to prove his
14 or her innocence, and the law never imposes upon a defendant
15 in a criminal case the burden of calling any witnesses or
16 producing any evidence. The government need not, however,
17 prove guilt beyond all possible doubt. The test is one of
18 reasonable doubt. A reasonable doubt is a doubt based on
19 reason and common sense; the kind of doubt that would make a
20 reasonable person hesitate to act. Proof beyond a reasonable
21 doubt must, therefore, be proof of such a convincing
22 character that a reasonable person would not hesitate to rely
23 and act on it in the most important of his or her own
24 affairs.

25 Now, an indictment is but a formal method of

1 accusing a person of a crime. It's not evidence of any kind
2 against the accused. The law, however, does recognize two
3 types of evidence that you may properly use in deciding
4 whether a defendant is guilty or not guilty.

5 One type of evidence is called direct
6 evidence. Direct evidence is testimony by a witness about
7 what is known to him or her by virtue of his or her own
8 senses, that is, what a witness sees, feels, hears, or
9 touches.

10 The other type of evidence is called
11 circumstantial evidence. This is evidence that tends to
12 prove a disputed fact by proof of other facts. As applied to
13 this criminal proceeding, circumstantial evidence is proof of
14 a chain of facts based upon certain circumstances indicating
15 the guilt or innocence of the accused. That's all there is
16 to circumstantial evidence. You infer on the basis of
17 reason, experience and common sense the existence or
18 nonexistence of some other fact.

19 Circumstantial evidence is of no lesser value
20 than direct evidence, and no greater degree of certainty is
21 required of circumstantial evidence than of direct evidence.
22 The law makes no distinction between the weight to be given
23 direct or circumstantial evidence. All that's required is
24 that before convicting the accused, you, the jury, be
25 satisfied of the defendant's guilt beyond a reasonable doubt

1 from all the evidence in the case.

2 During the charge you just heard me use, and
3 will hear me use again, the term inference. And in your
4 deliberations, and as stated, you are permitted to make
5 inferences on the basis of your reason, experience and common
6 sense. So I'll now explain the meaning of the term
7 inference.

8 During your deliberations you're to consider
9 only the evidence presented in the case. The evidence in the
10 case consisted of the sworn testimony of the witnesses,
11 physical items, documents, exhibits, and all the facts that
12 may have been admitted or stipulated to. Anything you may
13 have heard or seen outside the courtroom is not evidence and
14 must be entirely disregarded. However, in your consideration
15 of the evidence, you're not limited only to what you've seen
16 and heard during the trial. You are permitted but not
17 required to draw from facts that you find to have been proven
18 such reasonable inferences as seem justified in the light of
19 your experience, reason and common sense. Now, an inference
20 is not a suspicion or a guess. It's a reasoned, logical
21 conclusion that a disputed fact exists or does not exist on
22 the basis of another fact that you find has been proven.
23 Inferences may be drawn from both the direct and
24 circumstantial evidence.

25 Now, the statements and arguments of counsel

1 are not evidence in the case unless made as an admission or
2 stipulation of fact. If the attorneys on both sides agree to
3 the existence of a fact, you must then, unless otherwise
4 instructed, accept that stipulation as evidence and regard
5 that fact as proven.

6 It's the duty of attorneys on each side of
7 this case to object when the other side offers testimony or
8 other evidence that the attorney believes is not admissible.
9 You should not show any prejudice against the attorney or
10 against that party because of the objections that have been
11 voiced.

12 Upon allowing testimony or other evidence to
13 be introduced over an attorney's objection, the Court does
14 not, unless expressly stated, indicate any opinion as to the
15 weight or effect of such evidence. You are the sole judges
16 of the credibility of all witnesses, and it is solely for you
17 to determine the weight and effect of all the evidence. When
18 the Court has sustained an objection, you must disregard that
19 question entirely. You may not draw any inference from the
20 wording of the question, nor may you speculate as to what a
21 witness would have said had he or she been permitted to
22 answer. In addition, if an attorney asks a witness a
23 question that contains an assertion of fact, you cannot
24 consider the assertion as evidence of that fact. The
25 lawyers' questions and statements are not evidence. The

1 witnesses' answers are the evidence.

2 Now, in your capacity as judges of the
3 credibility of witnesses and of the weight and effect of all
4 the evidence, you should carefully scrutinize all the
5 testimony given, the circumstances under which each witness
6 has testified, and every matter in evidence that tends to
7 show whether a witness is worthy of belief. Consider each
8 witness' intelligence, motive, state of mind, demeanor and
9 manner while on the stand. Consider the witness' ability to
10 observe the matters as to which he or she has testified and
11 whether he or she impresses you as having an accurate
12 recollection of these matters. Consider also any relation
13 each witness may bear to either side of the case, the manner
14 in which each witness might be affected by the verdict, and
15 the extent to which, if at all, each witness is either
16 supported or contradicted by other evidence in the case.

17 If you find that a witness made a prior
18 inconsistent statement, in other words, a statement made
19 before the trial that conflicts with his or her trial
20 testimony, you may consider that fact in deciding how much of
21 the trial testimony, if any, to believe. In making this
22 determination, you may consider whether the witness purposely
23 made a false statement or whether it was an innocent mistake;
24 whether the inconsistency concerns an important fact, or
25 whether it had to do with a small detail; and whether the

1 witness had an explanation for the inconsistency and whether
2 that explanation appeals to your common sense.

3 Inconsistencies or discrepancies in the
4 testimony of a witness or between the testimony of different
5 witnesses may or may not cause you to discredit such
6 testimony. Two or more persons witnessing an incident or a
7 transaction may see or hear it differently and innocent
8 misrecollection, like failure to recollect, is not an
9 uncommon experience. In weighing the effect of discrepancy,
10 always consider whether it pertains to a matter of importance
11 or to an unimportant detail, and whether the discrepancy
12 results from innocent error or intentional falsehood.

13 As I've said previously, it's your job to
14 judge the credibility of each witness. In evaluating the
15 credibility of the witnesses, you should take into account
16 any evidence that a witness may benefit in some way from the
17 outcome of the case. Such interest in the outcome creates a
18 motive to testify falsely and may sway a witness to testify
19 in a way that advances his or her own interest. Therefore,
20 if you find that any witness whose testimony you are
21 considering may have an interest in the outcome of this
22 trial, then you should bear that factor in mind when
23 evaluating the credibility of the testimony and accept it
24 with great care.

25 Keep in mind, though, that it does not

1 automatically follow that testimony given by an interested
2 witness is to be disbelieved. There are many people who, no
3 matter what their interest in the outcome of the case may be,
4 would not testify falsely. It is for you to decide to what
5 extent, if at all, the witness' interest has affected his or
6 her testimony.

7 You'll recall that some witnesses who
8 testified were law enforcement officers. The testimony of a
9 law enforcement officer is entitled to no special treatment
10 or consideration; it does not have any greater or lesser
11 weight. The testimony of a law enforcement officer who takes
12 the stand is subject to the same rules and tests applicable
13 to the testimony of any other witness regarding, for example,
14 credibility, bias and interest in the outcome.

15 You'll recall that Andrea Lester, a forensic
16 scientist, and James Thompson, a computer forensic scientist,
17 gave testimony concerning their fields of expertise. The
18 rules of evidence provide that if scientific, technical or
19 other specialized knowledge might assist you in understanding
20 the evidence or in determining a fact in issue, a witness
21 qualified by knowledge, skill, experience, training or
22 education may testify and state an opinion concerning such
23 matters.

24 Merely because these witnesses were allowed to
25 testify and express opinions and conclusions does not mean,

1 however, that you must accept their testimony. You should
2 judge their testimony like any other testimony. You may
3 accept it or reject it and give it such weight as you think
4 it deserves, considering each witness' training and
5 experience, the soundness of the reasons given for their
6 opinion, and all other evidence in the case. The testimony
7 is entitled to no special treatment or consideration; it does
8 not have any greater or lesser weight. All witnesses who
9 take the stand are subject to the same rules and tests
10 regarding, for example, credibility, bias, and interest in
11 the outcome. You may consider the soundness of the reasons
12 given for each witness' opinion and the methods by which each
13 witness reached his or her conclusions. The testimony is
14 given to assist you in reaching a proper conclusion. It is
15 entitled to such weight as you find the witnesses'
16 qualifications warrant, but is not controlling on your
17 judgment.

18 Now, the fact that the prosecution is brought
19 in the name of the United States government entitles it to no
20 greater consideration or attention than any other party to
21 this litigation. All parties, government and defendants
22 alike, stand equal before the law.

23 As stated previously, the law never imposes on
24 a defendant in a criminal case the burden or duty to testify,
25 to call witnesses or to produce evidence. No inference of

1 any kind may be drawn and no presumption of guilt rises from
2 a defendant's decision not to testify.

3 Crossed out some page here just to make it
4 easier on you. Skip right over that.

5 Now in making your decision, you're not bound
6 to any decide any issue of fact in accordance with the
7 testimony of any number of witnesses that does not produce in
8 your minds belief in the likelihood of truth against the
9 testimony of a lesser number of witnesses or other evidence
10 that does produce such belief in your minds. The test is not
11 which side brings the greater number of witnesses or presents
12 the greater quantity of evidence but rather which witness and
13 which evidence appeals to your mind as being the most
14 accurate and otherwise trustworthy.

15 The law does not require the prosecution to
16 call as witnesses all persons who may have been present at
17 any time or place involved in the case or who may appear to
18 have some knowledge of the matters in issue at this trial.
19 The law does not require the prosecution to produce as
20 exhibits all papers and things mentioned in the evidence.
21 You must decide this case on the evidence or lack of evidence
22 presented. You should not be concerned with why someone was
23 not called as a witness or why certain evidence was not
24 presented.

25 During the trial you've heard testimony of

1 witnesses and arguments by counsel that the government did
2 not utilize specific investigative techniques. For example,
3 at some points no fingerprints were taken or a chemical
4 analysis may not have been done on every item. You may
5 consider these facts in deciding whether the government has
6 met its burden of proof. As I told you, you should look at
7 all the evidence or lack of evidence in deciding whether the
8 defendant is guilty. However, you're also instructed that
9 there is no legal requirement that the government use all
10 investigative techniques to prove its case. For example,
11 there's no requirement that the government must attempt to
12 take fingerprints or to have every item analyzed. Law
13 enforcement techniques are not your concern.

14 Your concern, as I said, is to determine
15 whether or not, on the evidence presented or lack of evidence
16 presented, a defendant's guilt has been proven beyond a
17 reasonable doubt.

18 Now, in this case you're being asked to decide
19 whether the accused are guilty or not guilty of the crime
20 charged -- crimes charged in the indictment. You're not
21 being asked whether any person is or may be guilty or not
22 guilty. Your verdict should be based solely on the evidence
23 or lack of evidence as to the particular defendant you're
24 considering in accordance with my instructions and without
25 regard to the guilt or innocence of other people. It is not

1 your duty then to give -- I'm sorry. It is your duty then to
2 give separate and personal consideration to each defendant
3 and to each count charged against him or her. In this regard
4 you should consider what the evidence in the case shows with
5 respect to each defendant and to each offense that each
6 defendant is charged with. In sum, each defendant should be
7 considered separately and each count should be considered
8 separately.

9 The indictment contains a total of 7 counts.
10 Each count charges a defendant with a different crime. There
11 are two defendants on trial before you. You must, as a
12 matter of law, consider each count of the indictment and each
13 defendant's involvement in that count separately, and you
14 must return a separate verdict on each defendant for each
15 count in which he or she -- excuse me -- in which he or she
16 is charged. Also bear in mind that some counts do not apply
17 to a particular defendant. In this regard, Defendant
18 O'Connor is charged in counts one, three, four, five, and
19 seven. Defendant Sacco is charged in counts two, three,
20 four, six and seven.

21 In reaching your verdict, bear in mind that
22 guilt is personal and individual. Your verdict of guilty or
23 not guilty must be based solely upon the evidence about the
24 defendant under consideration. The case against each
25 defendant, on each count, stands or falls upon the proof or

1 lack of proof against that defendant alone, and your verdict
2 as to any defendant on any count should not control your
3 decision as to any other defendant on any other count.

4 We saw some charts and summaries that were
5 introduced by both sides as exhibits to illustrate some
6 point. Some of these charts and summaries that were before
7 you have actually been introduced into evidence and therefore
8 may be taken into the jury room. Others were not introduced
9 and may not be taken into the jury room. However, if you
10 have a question or you believe these will resolve an issue in
11 the case when you deliberate, just send a note and ask to
12 come back into the courtroom and look at the chart or summary
13 that was not introduced into evidence.

14 Remember, however, that these charts and
15 summaries are compilations and visual representations of data
16 that were set -- that were set forth in testimony or
17 documents that were received in evidence. They're no better
18 than the evidence which they're based and do not, in and of
19 themselves, constitute independent evidence. Rather, it's
20 for you to decide whether the charts, schedules and summaries
21 correctly present the data set forth in the evidence on which
22 they're based and what effect, if any, the data has on your
23 determination of the facts.

24 Now, you'll note that the indictment charges
25 that the offenses were committed on or about certain dates.

1 The proof need not establish with certainty the exact date of
2 an alleged offense. It is sufficient if the evidence in the
3 case establishes -- establishes beyond a reasonable doubt
4 that an offense was committed on a date reasonably near the
5 date alleged.

6 You may not draw any inference, favorable or
7 unfavorable, towards the government or the defendants on
8 trial from the fact that certain persons were not named or
9 charged as defendants in the indictment. The circumstances
10 that these persons were not indicted must play no part in
11 your deliberations.

12 Whether a person should be named or indicted
13 as a defendant is a matter within the sole discretion of
14 United States Attorney and the grand jury. Therefore, you
15 may not consider it in any way in reaching your verdict as to
16 the defendants on trial.

17 Before I read you the indictment filed in the
18 case and before I instruct you on the substantive law you're
19 to apply to the facts as you find them, I have just a few
20 closing remarks to make. The first concerns matters relating
21 to person's state of mind; for example, knowledge,
22 willfulness and intent. A person's state of mind is a fact
23 you're being called upon to decide. Medical science,
24 however, has not yet devised an instrument that can record
25 what was in a person's mind in the past. Rarely is direct

1 proof available to establish a person's state of mind.
2 Rather, a person's state of mind may be inferred from what he
3 or she says or does at the time of the occurrence or
4 nonoccurrence of certain events.

5 The intent with which an act is done is often
6 more clearly and conclusively shown by the act itself, or by
7 a series of acts, than by words or explanations of the act
8 uttered long after its occurrence. Accordingly, intent and
9 also willfulness and knowledge is usually established by
10 surrounding facts and circumstances existing at the time the
11 act or acts in question occurred and the reasonable
12 inferences to be drawn from them.

13 Intent and motive, however, should never be
14 confused. Motive is what prompts a person to act or fail to
15 act. Intent refers only to the state of mind with which the
16 act is done or not done. Personal advancement and financial
17 gain are two well-recognized motives for much of human
18 conduct. These laudable motives may prompt one person to
19 voluntary acts of good and another to voluntary acts of
20 crime. Good motive alone is never a defense where the act
21 done or omitted is a crime. Therefore, the motive of the
22 accused is immaterial except insofar as evidence of motive
23 may aid determination of the state of mind.

24 I will instruct you further on the meaning of
25 knowledge and willfulness when it becomes appropriate.

1 I will now give you a brief description of
2 this case after which I will instruct you on the substantive
3 law you're to apply to the facts as you find them. Remember
4 the government bears the burden of proving each and every
5 element of each crime charged beyond a reasonable doubt.

6 The prosecution charges the defendants with
7 having committed certain crimes, which I shall now explain to
8 you.

9 Count one. Count one of the indictment reads
10 as follows:

11 Between in or about August of 2006 through
12 March of 2007, in the Northern District of New York and
13 elsewhere, Linda O'Connor, the defendant herein, being a
14 parent, legal guardian, and person having custody and control
15 of a minor, did knowingly offer to and did in fact sell and
16 otherwise transfer custody and control of a minor to Dean
17 Sacco, who traveled in interstate commerce, with knowledge
18 that as a consequence of the sale and transfer, the minor
19 would be portrayed in a visual depiction engaging in, and
20 assisting Dean Sacco to engage in sexually explicit conduct,
21 and with intent to promote the engaging in of sexually
22 explicit conduct by said minor for the purpose of producing a
23 visual depiction of such conduct and the rendering of
24 assistance by the minor to Dean Sacco to engage in sexually
25 explicit conduct for the purpose of producing a visual

1 depiction of such conduct.

2 Now don't worry about these numbers, you don't
3 have to memorize them, but I've got to tell them to you.
4 This charge is made in violation of Title 18 United States
5 Code, Section 2251A(a) and Section 2.

6 Count one of the indictment charges Defendant
7 O'Connor with violating Title 18 United States Code, Section
8 2251A(a), which provides in part that it's a crime for:

9 Any parent, legal guardian, or other person
10 having custody or control of a minor who sells or otherwise
11 transfers custody or control of such minor, or offers to sell
12 or otherwise transfer custody of such minor either

13 (1) with knowledge that, as a consequence of
14 the sale or transfer, the minor will be portrayed in a visual
15 depiction engaging in, or assisting another person to engage
16 in, sexually explicit conduct; or

17 (2) with intent to promote either
18 (A) the engaging in of sexually explicit
19 conduct by such minor for the purpose of producing any visual
20 depiction of such conduct; or

21 (B) the rendering of assistance by the minor
22 to any other person to engage in sexually explicit conduct
23 for the purpose of producing any visual depiction of such
24 conduct.

25 To convict Defendant O'Connor on this count,

1 the government must prove each of the following elements
2 beyond a reasonable doubt:

3 First, that Defendant O'Connor was a parent,
4 legal guardian, or a person having control or custody over
5 Shannon O'Connor;

6 Second, that Defendant O'Connor sold or
7 otherwise transferred custody or control over Shannon
8 O'Connor to Defendant Dean Sacco;

9 Third, that Defendant O'Connor either (I) knew
10 that, as a consequence of the sale or transfer, Shannon
11 O'Connor would be portrayed in a visual depiction engaging
12 in, or assisting Dean Sacco to engage in, sexually explicit
13 conduct; or (II) intended to promote either the engaging in
14 of sexually explicit conduct by Shannon O'Connor for the
15 purpose of producing any visual depiction of such conduct or
16 the rendering of assistance by Shannon O'Connor to Dean Sacco
17 to engage in sexually explicit conduct for the purpose of
18 producing any visual depiction of such conduct;

19 Fourth, at the time, Shannon O'Connor was
20 under the age of 18 years; and

21 Fifth, that Dean Sacco crossed state lines in
22 connection with the charged conduct.

23 The first element I read to you refers to the
24 phrase "custody or control." Control is the power to manage,
25 command, direct or restrain another person. Control involves

1 something more than mere persuasion, inducement or coercion.
2 The phrase "custody or control" is not limited to the same
3 degree of control as that exercised by a parent or guardian.
4 Control may be found to exist regardless of parental consent
5 or knowledge. The phrase "custody and control" includes
6 temporary supervision over or responsibility for a minor,
7 whether such temporary supervision or responsibility was
8 obtained legally or illegally.

9 The second element requires the government to
10 prove that the Defendant O'Connor sold or otherwise
11 transferred custody or control over Shannon O'Connor to
12 Defendant Dean Sacco. The term transfer has its ordinary,
13 everyday meaning. This includes causing custody or control
14 to pass from one to another, handing over custody or control,
15 or otherwise causing custody or control to be passed on or
16 handed over to another.

17 The third element that I read to you uses the
18 phrase "visual depiction of sexually explicit conduct."

19 A visual depiction includes any photograph,
20 film, video or picture, including undeveloped film and
21 videotape and data stored on a computer disc or by electronic
22 means which is capable of conversion into a visual image.

23 In deciding whether the government has proven
24 this element, you may consider all the evidence concerning
25 the defendant's conduct. While the government must prove

1 that defendant acted with knowledge that the minor would be
2 portrayed in a visual depiction of a child engaged in
3 sexually explicit conduct, or with the intent to promote
4 either the engaging in of sexually explicit conduct by the
5 minor for purposes of producing any visual depiction of such
6 conduct or the rendering of assistance by the minor to Dean
7 Sacco to engage in sexually explicit conduct for the purpose
8 of producing a visual depiction of such conduct, it is not
9 required that the government prove that the visual depiction
10 of that conduct was actually produced.

11 The term produced means producing, directing
12 manufacturing, issuing, publishing or advertising.

13 The phrase "sexually explicit conduct" as used
14 in this element means actual or simulated sexual intercourse,
15 including genital-to-genital, oral-to-genital,
16 anal-to-genital or oral-anal, whether between the persons of
17 the same or opposite sex; masturbation; sadistic or
18 masochistic abuse; or lascivious exhibition of the genitals
19 or pubic area of any person.

20 The term "lascivious exhibition" means the
21 depiction which displays or brings to view to attract notice
22 to the genitals or pubic area of children in order to excite
23 lustfulness or sexual stimulation in the viewer. Not every
24 exposure of the genitals or pubic area constitutes a
25 lascivious exhibition. In deciding whether the government

1 has proved that a particular visual depiction constitutes
2 lascivious exhibition, you should consider the following
3 questions:

4 - Whether the focal point of the visual
5 depiction is on the child's genitals or pubic area, and
6 whether there is -- or whether there is some other focal
7 area.

8 - Whether the setting of the visual depiction
9 makes it appear to be sexually suggestive, for example, in a
10 place or pose generally associated with sexual activity.

11 - Whether the child is displayed in an
12 unnatural pose, or in inappropriate attire, considering the
13 age of the child.

14 - Whether the child is fully or partially
15 clothed, or nude, although nudity is not in and of itself
16 lascivious.

17 - Whether the visual depiction suggests sexual
18 coyness or willingness to engage in sexual activity; and

19 - Whether the visual depiction is intended or
20 designed to elicit a sexual response in the viewer.

21 It is not required that a particular visual
22 depiction involve all of these factors to be a lascivious
23 exhibition. The importance which you give to any one factor
24 is up to you to decide.

25 The fourth element which the government must

1 prove beyond a reasonable doubt is that Shannon O'Connor was
2 less than 18 years old at the time of the acts alleged in the
3 indictment. The government does not need to prove that the
4 defendant knew that Shannon O'Connor was less than 18 years
5 old.

6 The fifth factor requires the government to
7 prove that Dean Sacco crossed state lines in connection with
8 the charged conduct. Excuse me.

9 Count two of the indictment reads as follows:

10 Between in and about August of 2006 through
11 March of 2007, in the Northern District of New York and
12 elsewhere, Dean Sacco, the defendant herein, who traveled in
13 interstate commerce, did knowingly offer to and did in fact
14 purchase and otherwise obtain custody and control of a minor
15 from Linda O'Connor, with knowledge that, as a consequence of
16 purchase and obtaining of custody, the minor would be
17 portrayed in a visual depiction engaging in, and assisting
18 Dean Sacco to engage in, sexually explicit conduct, and with
19 intent to promote the engaging in of sexually explicit
20 conduct by said minor for the purpose of producing a visual
21 depiction of such conduct and the rendering of assistance by
22 the minor to Dean Sacco to engage in sexually explicit
23 conduct for the purpose of producing a visual depiction of
24 such conduct.

25 In violation of title 18 United States Code,

1 Section 2251A(b) and Section 2.

2 Count two charges Dean Sacco with buying a
3 child for the purpose of producing child pornography in
4 violation of Section 2251A(b) of Title 18 United States Code.
5 Section 2251A(b) provides, in relevant part, that:

6 Whoever purchases or otherwise obtains custody
7 or control of a minor or offers to purchase or otherwise
8 obtain custody or control of a minor either

9 (1) with knowledge that, as a consequence of
10 the purchase or obtaining of custody, the minor will be
11 portrayed in a visual depiction engaging in, or assisting
12 another person to engage in, sexually explicit conduct; or

13 (2) with intent to promote either

14 (A) the engaging in of sexually explicit
15 conduct by such minor for the purpose of producing any visual
16 depiction of such conduct; or

17 (B) the rendering of assistance by the minor
18 or any other person to engage in sexually explicit conduct
19 for the purpose of producing any visual depiction of such
20 conduct shall be guilty of a crime.

21 To convict Defendant Sacco on this count, the
22 government must prove each of the following elements beyond a
23 reasonable doubt:

24 First, that Defendant Sacco purchased or
25 obtained custody or control over the minor or offered to

1 purchase or otherwise obtain custody or control of a minor;

2 Second, that Defendant Sacco either: (I) knew
3 that as a consequence of the purchase or obtaining of
4 custody, the minor would be portrayed in a visual depiction
5 engaging in, or assisting Sacco to engage in, sexually
6 explicit conduct; or (II) intending to promote either the
7 engaging in of sexually explicit conduct by the minor for the
8 purpose of producing any visual depiction of such conduct, or
9 the rendering of assistance by the minor to Defendant Sacco
10 to engage in sexually explicit conduct for the purpose of
11 producing any visual depiction of such conduct;

12 Third, at the time, the minor -- at the time,
13 the minor was under 18 years of age; and

14 Fourth, that Defendant Sacco crossed state
15 lines in connection with the charged conduct.

16 In addressing this count, you should use the
17 definitions I previously provided to you in connection with
18 count one.

19 Count three. Count three of the indictment
20 reads as follows:

21 Between in or about January of 2004 and March
22 of 2007, in the Northern District of New York and elsewhere,
23 Dean Sacco and Linda O'Connor, the defendants herein, while
24 in and affecting interstate commerce, did knowingly recruit,
25 entice, harbor, transport, provide and obtain by any means a

1 person that had not attained the age of 18 years, and more
2 specifically that person did not attain the age of 14 years
3 at the time, knowing that the person would be caused to
4 engage in a commercial sex act.

5 In violation of Title 18 United States Code,
6 Section 1591(a) & (b) and Section 2.

7 Both Defendants Sacco and O'Connor are charged
8 in count three of the indictment. Count three charges a
9 violation of Section 1591(a) & (b) of Title 18 of the United
10 States Code, which provides in relevant part that:

11 Whoever knowingly, in or affecting interstate
12 or foreign commerce... recruits, entices, harbors,
13 transports, provides or obtains by any means a person,
14 knowing that the person has not attained the age of 18 years
15 and will be caused to engage in a commercial sex act, shall
16 be guilty of a crime.

17 To convict the defendants on this count, the
18 government has to prove the following elements beyond a
19 reasonable doubt:

20 First, that the defendant recruited, enticed,
21 harbored, transported, provided or obtained the minor by any
22 means;

23 Second, that Shannon O'Connor had not attained
24 the age of 18 years;

25 Third, that the defendant knew that Shannon

1 O'Connor would be caused to engage in a commercial sex act;
2 and

3 Fourth, that the defendant's conduct affected
4 interstate or foreign commerce.

5 With respect to the third element, referring
6 to a commercial sex act, a commercial sex act means any sex
7 act on account of which anything of value is given to or
8 received by any person.

9 When considering this count three, remember
10 that each defendant is charged in this count and that you
11 must evaluate this charge as to each defendant separately.

12 Count four of the indictment charges -- excuse
13 me. Count four of the indictment reads as follows:

14 Between in or about August of 2006 through
15 March of 2007, in the Northern District of New York and
16 elsewhere, Dean Sacco and Linda O'Connor, the defendants
17 herein, did knowingly and willfully employ, use, persuade,
18 induce, entice and coerce a minor to engage in sexually
19 explicit conduct for the purpose of producing a visual
20 depiction of said conduct, and said depiction was produced
21 using materials that had been mailed, shipped, transported in
22 interstate and foreign commerce by any means, in that a
23 defendant, while using a camera which had been transported in
24 interstate commerce and was manufactured outside the state of
25 New York, photographed a minor in sexually explicit conduct.

1 In violation of Title 18 United States Code,
2 Section 2251(a) and Section 2.

3 Count four of the indictment charges both
4 defendants with violating Title 18 United States Code,
5 Section 2251(a) which provides in pertinent part that:

6 Any person who employs, uses, persuades,
7 induces, entices or coerces any minor to engage in... any
8 sexually explicit conduct for the purpose of producing any
9 visual depiction of such conduct, shall be guilty of a crime
10 if... that visual depiction was produced using materials that
11 had been mailed, shipped, or transported in interstate or
12 foreign commerce by any means...

13 To prove defendant guilty of using a minor to
14 produce child pornography, the government must prove each of
15 the following elements beyond a reasonable doubt:

16 First, that Shannon was under the age of 18;

17 Second, that defendant used, employed,
18 persuaded, induced, enticed or coerced Shannon to take part
19 in sexually explicit conduct for purpose of producing a
20 visual depiction of that conduct; and

21 Third, the visual depiction was produced using
22 materials that had been mailed, shipped or transported in
23 interstate or foreign commerce.

24 The second element that the government must
25 prove beyond a reasonable doubt is that defendant used,

1 employed, persuaded, induced, enticed or coerced Shannon
2 O'Connor to take part in sexually explicit conduct for the
3 purpose of producing a visual depiction of that conduct.

4 Visual depiction, as I've stated before,
5 includes any photograph, film, video or pictures, including
6 undeveloped film and videotape and data stored on computer
7 disc or by electronic means which is capable of conversion
8 into a visual image.

9 In deciding whether the government has proven
10 that the defendant acted for the purpose of producing a
11 visual depiction of the sexually explicit conduct, you may
12 consider all the evidence concerning the defendant's conduct.
13 While the government must prove that defendant acted with the
14 purpose of producing a visual depiction of the child engaging
15 in sexually explicit conduct, it is not required that the
16 government prove that the visual depiction of that conduct
17 was actually produced.

18 The phrase "sexually explicit conduct" is
19 defined as I previously explained it to you.

20 The third element which the government must
21 prove beyond a reasonable doubt is that the visual depiction
22 was produced using materials that had been mailed or
23 transported in interstate or foreign commerce.

24 Simply stated, the phrase "transported in
25 interstate or foreign commerce" means that the materials used

1 to produce the visual depiction had previously been moved
2 from one state to another or between the United States and
3 another country. Here, the government alleges that the
4 camera used to take the photographs in question was
5 manufactured in another state or country. I instruct you
6 that if you find that the camera was manufactured outside
7 New York that it is sufficient to satisfy this element. The
8 government does not have to prove that the defendant
9 personally transported the camera across the state line or
10 the defendant knew that the camera had previously crossed the
11 state line.

12 Count five of the indictment reads as follows:

13 Between in and about August of 2006 through
14 March of 2007, in the Northern District of New York and
15 elsewhere, Linda O'Connor, the defendant herein, being a
16 parent, legal guardian, and person having custody and control
17 of a minor, did knowingly permit said minor to engage in, and
18 for the minor to assist Dean Sacco to engage in, sexually
19 explicit conduct for the purpose of producing a visual
20 depiction of such conduct, and said depiction was produced
21 using materials that had been mailed, shipped and transported
22 in interstate and foreign commerce by any means, in that, a
23 defendant, while using a camera which had been transported in
24 interstate commerce and was manufactured outside the State of
25 New York, photographed a minor in sexually explicit conduct.

1 In violation of Title 18 United States Code,
2 Section 2251(b) and Section 2.

3 Count five of the indictment charges Defendant
4 O'Connor with violating Title 18 United States Code, Section
5 2251(b), which provides in part that:

6 Any parent, legal guardian, or person having
7 custody or control of a minor who knowingly permits such
8 minor to engage in, or to assist any other person to engage
9 in, sexually explicit conduct for the purpose of producing
10 any visual depiction of such conduct shall be guilty of a
11 crime if such parent, legal guardian, or person knows or has
12 reason to know that such visual depiction... was produced
13 using materials that had been mailed, shipped or transported
14 in interstate or foreign commerce by any means...

15 To prove a defendant guilty of this charge,
16 the government must prove each of the following elements
17 beyond a reasonable doubt:

18 First, that Shannon O'Connor was under the age
19 of 18;

20 Second, that the defendant was a parent, legal
21 guardian or person having custody or control over Shannon
22 O'Connor;

23 Third, that the defendant knowingly permitted
24 the minor to engage in, or assist any other person in,
25 sexually explicit conduct for the purpose of producing a

1 visual depiction of that conduct; and

2 Fourth, the visual depiction was produced by
3 using materials that had been mailed or transported in
4 interstate or foreign commerce.

5 Again, in analyzing this charge, you should
6 use the definitions I previously gave you.

7 Count six of the indictment reads as follows:

8 First, that between in and about August of
9 2006 through March of 2007, in the Northern District of New
10 York and elsewhere, Defendant Dean Sacco did travel in
11 interstate commerce for the purpose of engaging in illicit
12 sexual conduct with a minor under 18 years of age.

13 In violation of Title 18 United States Code,
14 Section 2423(b) and Section 2.

15 Count six charges Defendant Sacco with
16 violating Section 2423(b) of Title 18 of the United States
17 Code, which provides in relevant part that:

18 A person who travels in interstate commerce...
19 for the purpose of engaging in any illicit sexual conduct
20 with another person shall be guilty of a crime.

21 To convict Dean Sacco on this count, the
22 government must prove the following elements beyond a
23 reasonable doubt:

24 First, that the defendant traveled in
25 interstate commerce;

1 Second, that one of the purposes of
2 defendant's travels across state lines was to engage in
3 illicit sexual conduct with another person; and

4 Third, that Shannon O'Connor was under 18
5 years of age at the time of the charged conduct.

6 The second element requires the government to
7 prove that one of the motives or purposes for the travel was
8 to engage in illicit sexual conduct with another person. The
9 government must show that one of the defendant's motivating
10 purposes for traveling across state lines was for engaging in
11 sexual activity with a minor. While the government need not
12 show that the illegal sexual conduct was the sole, or only,
13 purpose for the trip, it is not enough if you find that the
14 illegal sexual conduct was merely incidental to the travel.

15 For purposes of this count, the term "illicit
16 sexual conduct" means a sexual act with a person under the
17 age of 18 or any commercial sex act. The phrase "sexual act"
18 means contact between the penis and vulva or the penis and
19 the anus. Contact involving the penis occurs upon
20 penetrating, however slight. The phrase "sexual act" also
21 means contact between the mouth and the penis, the mouth and
22 the vulva, or the mouth and the anus; the penetration,
23 however slight, of the anal or genital opening of another by
24 a hand or finger or by any object, with an intent to abuse,
25 humiliate, harass, degrade, or arouse or gratify the sexual

1 desire of any person; or the intentional touching, not
2 through the clothing, of the genitalia of another person who
3 has not attained the age of 16 years with an intent to abuse,
4 humiliate, harass, degrade, or arouse or gratify the sexual
5 desire of any person.

6 The phrase "commercial sex act" means any sex
7 act, on account of which anything of value is given to or
8 received by any person.

9 Count seven of the indictment reads as
10 follows:

11 Between in or about January of 2004 through
12 March of 2007, in the Northern District of New York and
13 elsewhere, Dean Sacco and Linda O'Connor, the defendants
14 herein, did knowingly and willfully possess material which
15 contains images of child pornography which were produced
16 using materials which have been mailed, shipped and
17 transported in interstate and foreign commerce by any means,
18 in that, defendants knowingly possessed computers, computer
19 hard drives, cameras and other materials containing graphic
20 images of child pornography, knowing that the images
21 contained a visual depiction and material containing a visual
22 depiction, the production of which involved the use of a
23 minor engage in sexually explicit conduct as defined in Title
24 18 United States Code, Section 2256.

25 In violation of Title 18 United States Code,

1 Section 2252A(a)(5)(B) and Section 2.

2 Count seven charges both defendants with
3 violating Section 2252A(a)(5)(B) of the Title 18 of the
4 United States Code, which provides, in relevant part, that:

5 Any person who knowingly possesses any book,
6 magazine, periodical, film, videotape, computer disc or any
7 other material that contains an image of child pornography...
8 that was produced using materials that have been mailed or
9 shipped or transported in interstate or foreign commerce by
10 any means... shall be guilty of a crime.

11 To convict the defendants on this count, the
12 government must prove each of the following elements beyond a
13 reasonable doubt:

14 First, that the defendant knowingly possessed
15 a visual depiction, as I will explain that term to you;

16 Second, that the visual depiction was produced
17 using materials that had been transported in interstate or
18 foreign commerce;

19 Third, that the visual depiction was child
20 pornography, as I'll explain that term; and

21 Fourth, that the defendant knew of the
22 sexually explicit nature of the material and that the visual
23 depictions were of actual minors engaged in that sexually
24 explicit conduct.

25 The first element which the government must

1 prove beyond a reasonable doubt is that the defendant
2 knowingly possessed a visual depiction. A visual depiction
3 includes any photograph, film, video or picture, including
4 undeveloped film and videotape, and data stored on computer
5 disc or by electronic means which is capable of conversion
6 into a visual image.

7 To possess something means to have it within a
8 person's control. This does not necessarily mean that the
9 person must hold it physically, that is, have actual
10 possession of it. As long as the visual depiction is within
11 the defendant's control, he or she possesses it. If you find
12 that defendant had either actual possession of the depiction
13 or that he had the power and intention to exercise control
14 over it, even though it was not in his physical possession,
15 you may find that the government has proven possession.

16 The law also recognizes that possession may be
17 sole or joint. If one person alone possesses it, that is
18 sole possession. However, it is possible that more than one
19 person may have the power and intention to exercise control
20 over the visual depiction. This is called joint possession.
21 If you find that the defendant had such power and intention,
22 then he or she possessed the depiction even if he or she
23 possessed it jointly with another person.

24 The government must prove that the defendant
25 possessed the depiction knowingly. And act is done knowingly

1 when it is done voluntarily and intentionally and not because
2 of accident, mistake or some other innocent reason.

3 The second element which the government must
4 prove beyond a reasonable doubt is that the child pornography
5 was produced using materials that had been transported in
6 interstate or foreign commerce.

7 I previously explained this phrase to you and
8 you may apply that same definition here. Essentially, it
9 must be shown that the materials used to produce the child
10 pornography had previously moved from one state to another or
11 between the United States and another country.

12 The third element which the government must
13 prove beyond a reasonable doubt is that the visual depiction
14 was child pornography.

15 Child pornography means any visual depiction,
16 the production of which involved the use of a minor engaging
17 in sexually explicit conduct and which portrays that minor
18 engaged in that conduct.

19 The visual depiction must be of a real person
20 under the age of 18 engaging in sexually explicit conduct.
21 The government does not have to prove the identity of the
22 minor or the exact age of the minor. You may consider all of
23 the evidence in determining whether the depiction portrayed
24 an actual person under the age of 18 engaging in sexually
25 explicit conduct.

1 I previously defined the term "sexually
2 explicit conduct" for you and you should apply that same
3 definition to this count.

4 The fourth element which the government must
5 prove beyond a reasonable doubt is that the defendant knew
6 that the material possessed was child pornography.

7 As I stated before, an act is done knowingly
8 when it's done voluntarily and intentionally and not because
9 of accident, mistake or some other innocent reason.

10 In this case, the term "knowingly" refers to
11 an awareness of the sexuality -- excuse me, of the sexually
12 explicit nature of the material, and to the knowledge that
13 the visual depictions were in fact of actual minors engaged
14 in that sexually explicit conduct.

15 The government must show that the defendant
16 had knowledge of the general nature of the contents of the
17 material. The defendant need not have specific knowledge as
18 to the identity or actual age of the underage performer. The
19 defendant must have knowledge or an awareness that the
20 material contained a visual depiction of a minor engaged in
21 sexually explicit conduct. Such knowledge may be shown by
22 direct or circumstantial evidence, or both. Eyewitness
23 testimony of the defendant's viewing of the material is not
24 necessary to prove his or her awareness of its contents; the
25 circumstances may warrant that the defendant was aware of

1 what the material depicts. Furthermore, the defendant's
2 belief as to the legality or illegality of the material is
3 irrelevant.

4 Now I'm going to talk about the other theory
5 that I mentioned to you that the government has about proving
6 these counts.

7 In counts four, five and seven, four, five and
8 seven, the defendants also are charged with violating 18
9 United States Code Section 2, aiding and abetting. Section 2
10 of Title 18 of the United States Code provides that:

11 Whoever commits an offense against the United
12 States or aids or abets or counsels, commands, or induces, or
13 procures its commission, is punishable as a principal.

14 Under the aiding and abetting statute, it is
15 not necessary for the government to show that a particular
16 individual him or herself physically committed the crime with
17 which he or she is charged in order for you to find that
18 individual guilty. The guilt of an individual may be
19 established without proof that the accused personally did
20 every act constituting the offense charged.

21 A person who aids or abets another to commit
22 an offense is just as guilty of the offense as if he or she
23 committed that offense him or herself.

24 Accordingly, you may find an individual guilty
25 of the offense charged if you find beyond a reasonable doubt

1 that the government has proved that another person actually
2 committed the offense with which the individual is charged,
3 and that individual aided or abetted that person in the
4 commission of a crime.

5 As you can see, the first requirement is that
6 you find that another person has committed the crime charged.
7 Obviously, no one can be convicted of aiding or abetting the
8 criminal acts of another if no crime was committed by the
9 other person in the first place. But if you do find that a
10 crime was committed, then you must consider whether the
11 particular individual under consideration aided or abetted
12 the commission of the crime.

13 In order to aid or abet another to commit a
14 crime, it is necessary that the individual willfully and
15 knowingly associate him or herself in some way with the
16 crime, and that he or she willfully and knowingly seeks by
17 some act to help make the crime succeed.

18 Participation in a crime is willful if action
19 is taken voluntarily and intentionally or, in the case of a
20 failure to act, with the specific intent to fail to do
21 something the law requires to be done; that is to say, with a
22 bad purpose either to disobey or disregard the law.

23 In other words, if an individual is fully
24 aware that what he or she is doing plays a significant role
25 and intentionally participates in facilitating a transaction

1 prohibited by law, he or she is equally guilty as the person
2 who directly performs the illegal acts, even though the other
3 played a greater or much larger role in the perpetration of
4 the crime.

5 Whether one aided and abetted or caused
6 another to commit a crime must be determined based on the
7 alleged aider and abettor's overt conduct, acts and
8 statements. You are entitled to consider circumstantial
9 evidence as proof that one or more of these individuals aided
10 and abetted the crime. It is not necessary that the acts
11 alleged to have constituted aiding and abetting be criminal
12 in and of themselves. Under the law, acts which might
13 otherwise be legal can constitute the basis for a finding of
14 aiding and abetting.

15 A mere presence of an individual where a crime
16 is being committed, even coupled with knowledge by the
17 individual that a crime is being committed, or the mere
18 acquiescence by the individual in the criminal conduct of
19 others, even with guilty knowledge, is not sufficient to
20 establish aiding and abetting. An aider and abettor must
21 have some interest in the criminal venture.

22 To determine whether an individual aided and
23 abetted the commission of the crime with which he or she is
24 charged, ask yourself these questions:

25 Did she or he participate in the crime charged

1 as something he or she wished to bring about?

2 Did the individual associate him or herself
3 with the criminal venture knowingly and willfully?

4 Did the individual seek by his or her actions
5 to make the criminal venture succeed?

6 If he or she did, then the individual is an
7 aider and abettor and therefore guilty of the offense. If,
8 on the other hand, your answers to this series of questions
9 are no, then the individual is not an aider and abettor, and
10 he or she cannot be found to have committed the charged
11 crime.

12 After you retire to the jury room, you should
13 first select a foreperson who will preside over your
14 deliberations and speak on your behalf here in court. Keep
15 in mind, however, that the foreperson's vote is entitled to
16 no more weight than any other juror. Your verdict on each
17 count in the indictment must be unanimous -- that means
18 you've all got to agree -- as to either guilt or innocence.
19 Your verdict must also represent the considered judgment of
20 each juror. Each of you must decide the case for yourself,
21 but it is your duty as jurors to consult with one another and
22 to deliberate with a view toward reaching an agreement if you
23 can do so without violence to individual judgment.

24 I must be getting tired. I apologize.

25 There's nothing peculiarly different in the

1 way a jury should consider the evidence in a criminal case
2 from that in which all reasonable persons treat any question
3 that depends on evaluation of evidence presented to them.
4 You're expected to use your good sense, to consider the
5 evidence in the case only for the purpose for which it's been
6 admitted, to give this evidence a reasonable and fair
7 construction in the light of your common knowledge of the
8 natural inclinations and tendencies of human beings.

9 Consider each charge against each defendant
10 carefully. If, as to the count you are considering, you find
11 that the government has failed to prove to your satisfaction
12 each and every element of the crime charged beyond a
13 reasonable doubt, then you must acquit the defendant on that
14 count. On the other hand, if, as to that count you're
15 considering, you find that the government has proven to your
16 satisfaction every element of the crime charged, then you
17 must convict the defendant on that count.

18 If you find that the law as I've explained it
19 to you has not been violated, you must not hesitate for any
20 reason to return a verdict of not guilty. On the other hand,
21 if you find that the law has been violated, you must not
22 hesitate, because of sympathy or any other reason, to render
23 a verdict of guilty.

24 Remember also that the punishment provided by
25 law for these offenses charged in the indictment is a matter

1 exclusively within the province of the court and should never
2 be considered by you in any way in arriving at an impartial
3 verdict as to the guilt or innocence of the accused.

4 During your deliberations do not hesitate to
5 re-examine your views and change your mind. Remember, you're
6 not partisans. Your duty is to seek the truth from the
7 evidence presented to you. If any reference by the Court or
8 by counsel on any matters of evidence does not coincide with
9 your own recollection, it is your recollection that controls
10 your deliberations.

11 If, during the course of your deliberations,
12 your recollection on any part of the testimony should fail,
13 or if you should find yourself in doubt concerning my
14 instructions, you are privileged to return to the courtroom
15 to have the testimony read back to you, or have the
16 instructions explained.

17 Should you desire to communicate with the
18 Court during your deliberations, please put your message or
19 question in writing. The foreperson should sign the note and
20 pass it to the marshal who will bring it to my attention.
21 I'll then respond, either orally or in writing, by having you
22 return to the courtroom. I caution you, however, in your
23 communications with the Court, you must never state your
24 numerical division over any issue, if there is one.

25 Verdict forms have been prepared for you.

1 After you select a foreperson, you should review them. Once
2 you've reached a unanimous verdict, your foreperson should
3 fill in the verdict form, date it and sign it -- this is the
4 verdict form -- to date it and sign it and inform the marshal
5 a verdict has been reached.

6 Now, I'm going to ask you all to step outside
7 for just a moment with Colleen, and then I'm going to bring
8 you back in and give you some more information.

9 (Jury excused)

10 THE COURT: Exceptions or matters not already
11 spread upon the record, government?

12 MR. LOVRIC: None, your Honor.

13 THE COURT: Defendants?

14 MISS PEEBLES: Nothing more than we already
15 talked about in chambers.

16 MR. FISCHER: No, your Honor. Thank you.

17 THE COURT: Okay. Bring them back.

18 (Jury present)

19 THE COURT: All right, ladies and gentlemen.
20 At this time it is the duty of the Court to excuse the
21 alternate jurors. The Court would like to thank you on
22 behalf of everyone present. This has been a long, drawn-out
23 trial, much longer than any of us expected or thought, and
24 it's nobody's fault. It's just the way these things happen.
25 Takes time to put this evidence in and have the final

1 arguments and the charge and all of those things. And we
2 appreciate all of the attention that you four gave as the
3 trial progressed.

4 As Mr. Fischer mentioned in his remarks, I was
5 also watching all of you, main jurors, alternate jurors, and
6 you did play close attention to the evidence. You watched
7 and listened to everything that was being presented. That's
8 a hard job at times. You did it, and we thank you for it.
9 And we also thank you for the time you took out of your own
10 lives to come down here and be with us.

11 So, I don't know if Colleen is about to punish
12 you by making you make a phone call or not. I take no part
13 in that. I leave it up to her.

14 THE CLERK: I believe, your Honor, based on
15 their service, we can go ahead and permanently excuse them.

16 THE COURT: You think they did enough?

17 THE CLERK: I think so.

18 THE COURT: I'll take your word. Please step
19 aside. Hope you've set the date for the reunion before you
20 leave.

21 (Alternates excused)

22 THE CLERK: Will the marshal come forward to
23 be sworn.

24 (Marshal was duly sworn)

25 THE COURT: All right. Ladies and gentlemen,

1 we'll get the verdict forms into you very, very shortly.

2 The next thing is, the lawyers will go over
3 the exhibits and make sure they're in proper order to bring
4 back to you. If you need to hear something played or see a
5 video, just write a note, hand it to the marshal, who will
6 hand it to me, and it will take some time to get it together.
7 We'll have to go back and get it as you want. Try to be
8 explicit as to what part or parts, whatever you want. You
9 want the whole thing, you get it. If you want parts of it,
10 kind of cut them out.

11 Now, I know the charge was long, boring,
12 arduous, legalistic, and perhaps incomprehensible, so I'm
13 going to give you copies of the charge to take back in the
14 jury room with you. I know you were all taking notes. I
15 appreciated that, but I didn't want to tell you ahead of time
16 because you probably wouldn't have listened to anything. Now
17 I'll get that in shape for you and have it brought back for
18 you.

19 Okay. Ladies and gentlemen, you may begin
20 your deliberations. And also, we're going to ask you
21 questions about how long you want to stay. The rule is, you
22 can stay as long as you want until Colleen kicks you out or
23 Paul says -- as long as you want this evening, or you can
24 stay a short time and come back tomorrow. It's up to you.
25 You're not to be hurried in your deliberations. You have to

1 give a lot of consideration of what's been put before you.
2 Take all the time that you think you need. So that's
3 something that someone will probably ask you about ten of 5,
4 do you want to stay and deliberate longer or do you want to
5 come back tomorrow. It's up to you guys. Whatever you want
6 to do. You're all set.

7 (Jury excused for deliberations at 4:13 PM)

8 THE COURT: Okay. You guys got to get
9 together with the exhibits now, right?

10 Any problem with the verdict form you see?

11 MR. FISCHER: No, Judge.

12 THE COURT: Okay. We'll get those ready for
13 the jury.

14 (Continuation of Deliberations)

15 (Jury present).

16 THE COURT: All right, ladies and gentlemen.
17 We understand that you would like to leave now and go home
18 and come back here tomorrow at 9:30, tomorrow morning. Is
19 that right?

20 (All Jurors say yes).

21 THE COURT: Just let me remind you not to
22 discuss the case among yourselves, with anybody else or
23 permit anyone to discuss it with you. You can't talk about
24 the case until you're all assembled, all 12 of you back in
25 the jury room tomorrow and, of course, you'll begin. You

1 don't have to come in here at all. Once you count 12 heads
2 you can go ahead and start deliberating. Stay away from
3 media or research or anything tonight. Have a nice evening
4 and we'll see seal you tomorrow morning. Have a nice
5 evening.

6 (Jury excused).

7 (Court stands adjourned).
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C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

VICKY A. THELEMAN, RPR, CRR
United States Court Reporter
US District Court - NDNY

Dated: November 19, 2008.

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 -----
4 UNITED STATES OF AMERICA,

5 -versus-

08-CR-77

6 LINDA O'CONNOR and DEAN SACCO.
7 -----

8 TRANSCRIPT OF JURY TRIAL

9 held in and for the United States District Court,
10 Northern District of New York, at the Federal Building and
11 Courthouse, 15 Henry Street, Binghamton, New York, on
12 THURSDAY, May 29, and FRIDAY, May 30, 2008, before the
13 HON. THOMAS J. McAVOY, Senior United States District Court
14 Judge, PRESIDING.

15 FOR THE GOVERNMENT:

16 UNITED STATES ATTORNEY'S OFFICE

17 BY: MIROSLAV LOVRIC, AUSA

18 Binghamton, New York

19 FOR THE DEFENDANT O'CONNOR:

20 FEDERAL PUBLIC DEFENDER'S OFFICE

21 BY: LISA PEEBLES, AFD

22 Syracuse, New York

23 FOR THE DEFENDANT SACCO:

24 KELLY FISCHER, ESQ.

25 Binghamton, New York

1 THE COURT: All right. We have a note from
2 the jury, Court Exhibit 1. It's signed by the foreperson,
3 juror number five. And the note reads as follows: Witness
4 number 16 for government, James Thompson, computer analysis.
5 We would like the stenographer to re-read his testimony. Any
6 objections?

7 MISS PEBBLES: No, your Honor.

8 MR. LOVRIC: No.

9 MR. FISCHER: No.

10 (Jury present).

11 THE COURT: All right. We have a note -- two
12 notes from the jury. We're going to deal with them seriatim,
13 one at a time. We're going to start with the first note
14 signed the foreperson, which reads as follows. Witness
15 number 16 for government, James Thompson, computer analysis,
16 we would like the stenographer to re-read his testimony and
17 Vicky tells me that she's ready to do that. So everybody's
18 in agreement. We're going to do that for you.

19 (Record read back).

20 THE COURT: All right. Ladies and gentlemen,
21 I take it, Juror No. 5, that's what you folks wanted on
22 question number one?

23 THE FOREPERSON: Yes.

24 Question number 2 is on an entirely different
25 topic and it deals with a legal analysis so I'm going to have

1 to confer with the lawyers before I answer that for you. But
2 I will attempt to answer that. I instructed you that if you
3 had a question about interpretation of the charge, you could
4 bring that up to me. So it might take me -- shouldn't take
5 long but if you'd return to the jury room, I'll go over this
6 with the attorneys and we'll bring you back in.

7 (Jury excused).

8 THE COURT: Okay. Folks, I have in my hand
9 Court Exhibit number 2 signed by the foreperson, Juror No. 5,
10 which reads as follows: Clarify aiding and abetting versus
11 guilty. All right. I will attempt to do that and I'll ask
12 for anybody's input, suggestions, objections, emendations or
13 anything else you might care to say about my analysis? The
14 charge itself doesn't analogize -- doesn't put those concepts
15 across from one another. They're supplemental concepts and I
16 told the jury, not in the formal charge, but in the preamble
17 that I gave to the charge, that the government -- the charge,
18 first of all, contains material having to do with the duties
19 of the Court and the jury, the other things that came in the
20 first part of the charge, then an analysis of each count of
21 the indictment and the elements of each count and then came
22 aiding and abetting which I told the jury was another theory
23 that the government is advancing to hold a particular
24 defendant liable, if you'll recall that preamble statement.
25 I'm not sure I used those exact words but that's the gist of

1 it.

2 So what I propose to charge to the jury at
3 this time is that you have been given a verdict form and the
4 charge which contains an analysis, at least in the charge, of
5 seven different counts of indictment charging each defendant
6 with certain counts and both defendants with certain counts.
7 Now, if you are considering a particular defendant as to a
8 particular count and you find that this defendant did not, in
9 fact, perform or -- well, perform each and every element of
10 that particular crime beyond a reasonable doubt, then you
11 cannot convict that defendant on that count unless you find
12 that that individual who you could not convict on that count
13 was an aider and abettor. First you have to find, to reach
14 that conclusion, that a crime was committed by another person
15 in the first place. If you don't find that, you cannot
16 consider aiding and abetting liability. But if you do find
17 that some other person committed the count that you're
18 considering, that you just decided you couldn't convict the
19 defendant you were considering on, but you find that another
20 person did that, then you can see if an individual aided and
21 abetted that person in committing that crime. I've
22 completely outlined what aiding and abetting means in the
23 charge. You have to refer to that definition to answer that
24 question.

25 Government?

USA vs O'Connor and Sacco

2439

1 MR. LOVRIC: I think that's correct.

2 THE COURT: Thank you.

3 MISS PEEBLES: Judge, maybe you can -- that's
4 fine but maybe you could also re-read the aiding and
5 abetting, at least the three.

6 THE COURT: I could, Lisa. They've got that
7 whole thing back there with them. If you want me to read it,
8 I'll do it.

9 MISS PEEBLES: Oh, yeah, and the other thing
10 is, Judge, that the aiding and abetting that the government
11 was advancing was only on the three counts.

12 THE COURT: I should point out to them as to
13 which the aiding and abetting apply.

14 MISS PEEBLES: And that the government's
15 theory. Yeah. Clarify it on those three counts.

16 THE COURT: Sure. I'll do that. Mr. Fischer?

17 MR. FISCHER: With that understanding, I don't
18 have any objection, your Honor.

19 THE COURT: All right. We'll just hold off a
20 minute so I make sure I know what I'm doing here. All right.
21 It's in the charge but I'll make sure I clarify it again.
22 Aiding and abetting applies to counts four, five, and seven,
23 right?

24 MISS PEEBLES: Right.

25 MR. LOVRIC: That's correct.

1 THE COURT: Okay. Bring them in. To tell
2 them a person is found to be an aider and abettor, that
3 person is guilty of that crime under the theory of aiding and
4 abetting. If a person is not found to be an aider and
5 abettor, the person cannot be found guilty of that particular
6 crime.

7 MR. LOVRIC: Unless they committed every
8 element of the theory.

9 THE COURT: That's the other theory of
10 liability. That's direct liability. Maybe I can use that.
11 I've never seen that used in cases so I better not.

12 (Jury present).

13 THE COURT: All right, ladies and gentlemen.
14 I'm going to try to answer your question the best way I can.
15 I may misperceive your question and if I do, the answer I'm
16 about to give you may not be correct and you are allowed,
17 after hearing my answer, to reassemble in the jury room and
18 say hey, Judge, you missed the boat. Here's what we really
19 mean. I'll be glad to try to straighten it out if I can.

20 Now, in the charge you're asked to consider
21 whether these defendants are guilty of seven counts. Some
22 defendants are named in a count, both defendants are named in
23 some counts and some counts are only applicable to one
24 defendant. Now you've got all that back in the original
25 instruction and every time you're considering a count in the

1 indictment your task is to first decide which defendant or
2 both does this count apply to. Once you figured that out,
3 then you go down and you analyze the elements of that count
4 and you see whether or not the defendant you're considering,
5 whether it's defendant one or defendant two or both of them,
6 has committed each and every element of that crime charged
7 beyond a reasonable doubt. If you find that the answer to
8 that question is no, then you cannot find that defendant
9 guilty on that count. However, on counts four, five, and
10 seven, clearly it's stated right here in the charge -- you'll
11 find it, it's on page 59, the government has asked the Court
12 to charge you and I did on another theory of guilt, other
13 than that the defendant you are considering committed each
14 and every element of the crimes in the counts that you just
15 considered. The government says, wait a minute. This is
16 another way that a defendant can be found guilty even if they
17 did not commit each and every element of the crime you're
18 considering, and that way is aiding and abetting and I've
19 outlined in the charge exactly what it means to be an aider
20 and abettor. But before you can use that theory you must
21 find that the other defendant committed the crime charged.
22 If you find that the other defendant committed the crime
23 charged, then you can look back at the defendant that you
24 found didn't commit every element of the crime charged and
25 see if that defendant was an aider and abettor under that

1 theory. If the answer to that is no, that's the end of it
2 for that defendant. If the answer to that is yes, then you
3 may find that defendant guilty under that theory of guilt.

4 How does that sound? Okay. Fine. If I
5 missed something, come back and I'll try to go over it with
6 you. Thank you.

7 (Jury excused).

8 (Continuation of deliberations).

9 THE COURT: All right. We have yet another
10 note from the jury. It's labeled Court Exhibit 3 signed by
11 the foreperson, and reads as follows: Can we please have the
12 transcript of the first videotape interview of Shannon
13 O'Connor with Detective Blenis and Liz Chesebro? Answer, I
14 don't think it's in evidence. However, we can suggest to
15 them they come in and watch the tape itself with the
16 transcript as an aid. If anybody doesn't object to that or
17 does object to that or --

18 MR. LOVRIC: I think that's correct, Judge.
19 If they want to either see or view the transcript, they do
20 have to then watch the videotape because the transcript is an
21 aid to the video but the video is the evidence to whatever
22 degree they're looking for -- whatever they're looking for.

23 THE COURT: I think they should also just be
24 reminded of that because, again, the transcript may or may
25 not be completely accurate but the tape is what it is. If

1 they haven't asked for the tape, I'm going to ask the
2 foreperson if that procedure is what he wants or does he want
3 something else.

4 MR. LOVRIC: If it is, I have the video, it's
5 quered and ready to go.

6 THE COURT: Where's the transcript?

7 MISS PEEBLES: Right there.

8 THE COURT: Okay. Is there enough for
9 everybody?

10 MISS PEEBLES: I think so.

11 THE COURT: Want to bring them in.

12 (Jury present).

13 THE COURT: Okay, ladies and gentlemen. We
14 have your third note which is labeled Court Exhibit 3 signed
15 by the foreperson and reads as follows. Can we please have
16 the transcript of the first videotape interview of Shannon
17 O'Connor with the Detective Blenis and Liz Chesebro?
18 Answer's no, unless, unless you want to watch it with the
19 videotape and the reason for that is that the videotape is
20 the evidence. The transcript was used by you folks as an aid
21 to understanding parts that were hard to understand. That's
22 the first part of the answer.

23 Second part is, is there any particular part
24 of the tape or transcript that you're interested in? If
25 there is, instead of playing it all, we can narrow it down

1 for you. You don't have to do that. Can you do that?

2 THE FOREPERSON: Yes.

3 THE COURT: Should we let you back there to do
4 that?

5 THE FOREPERSON: Yes. We can get the
6 transcript while we're watching the videos, is that true?

7 THE COURT: Absolutely. That's how you get
8 it. You've got to suffer through the tape. So if you want
9 to go back and narrow it down and give Vicky a couple of
10 minutes or the equipment operators a couple of minutes.

11 (Jury excused).

12 (Jury present).

13 THE COURT: All right. Ladies and gentlemen,
14 the parties have gone through what it is we believe you want
15 to hear and we're now directing your attention to pages 7
16 through 14 included of the transcript. And as you get to
17 those pages, we will play the tape for you. And if it's not
18 what you want to hear, let us know after you've heard it.

19 Okay, Mr. Lovric.

20 MR. LOVRIC: Okay.

21 (Playing Exhibit 88).

22 MR. FISCHER: Judge I do believe that is --

23 THE COURT: I can't hear a thing.

24 MR. FISCHER: I believe that's the end of
25 anything relating to Mrs. O'Connor as I understand it.

USA vs O'Connor and Sacco

2445

1 THE COURT: You're saying the tape should be
2 ended where it was stopped?

3 MR. FISCHER: Yes, sir.

4 THE COURT: Any problems? I thought we were
5 going to the end on 14?

6 MISS PEEBLES: That's right.

7 MR. FISCHER: I'm sorry, but I do believe
8 that -- all that relates to Miss O'Connor, Judge.

9 THE COURT: Let's hear from her counsel.

10 MISS PEEBLES: As far as I know we were going
11 to 14 because that's where we ended.

12 THE COURT: We got pretty much to the end of
13 14.

14 MISS PEEBLES: We're just about to the end of
15 it.

16 THE COURT: Let me ask the jury foreman, is
17 that the information you folks wanted?

18 THE FOREPERSON: I think we'd like to go to
19 the end of the whole tape because there's more discussion
20 about the camera.

21 MISS PEEBLES: If it's the camera, it goes on
22 to 15.

23 MR. FISCHER: There's more than that camera.

24 THE COURT: Let's go through the end of 15 and
25 we'll inquire again and see if there's more we should play.

USA vs O'Connor and Sacco

2446

1 (Playing Exhibit 88).

2 MR. LOVRIC: Do you want me to continue,
3 Judge?

4 THE COURT: I want to find out from the
5 foreperson if we need to have more of the tape played?

6 THE FOREPERSON: I'm hearing they want to go
7 through 17 because there's -- through 17.

8 (Playing Exhibit 88).

9 MR. LOVRIC: Should I keep going, Judge?

10 THE FOREPERSON: Yes. We'll go through to 18,
11 please.

12 (Playing Exhibit 88).

13 MR. LOVRIC: That's the bottom of 18.

14 THE FOREPERSON: That's fine. Thank you.
15 That's fine. Thank you.

16 THE COURT: Okay. All set now?

17 (Jury excused).

18 THE COURT: We're going to inquire of the jury
19 if they'd like to stay this evening or go home and come back
20 tomorrow. Colleen is making that inquiry now. So if you
21 want to stick around, at least to get that answer.

22 They want to go home so we'll bring them in
23 and send them home.

24 (Jury present).

25 THE COURT: Please be seated. All right,

1 ladies and gentlemen. I've been informed that it is your
2 choice to conclude deliberations today, as far as today is
3 concerned and go home and come back tomorrow, is that right?
4 Is that 9:30 a good time for you? Yes.

5 All right. Let me remind you not to discuss
6 the case among yourselves, with anybody else or permit anyone
7 to discuss it with you. Nothing in the media and no research
8 on your own. We'll see you tomorrow morning at 9:30. Have a
9 nice evening.

10 (Court stands adjourned).
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1 (Continuation of deliberations on May 30, 2008).

2 THE COURT: Okay. All right. We have a note
3 from the jury. It's labeled Court Exhibit Number 5. It's
4 signed by the foreperson and reads as follows: We would like
5 a clarification on aiding and abetting on count five because
6 there was only one defendant. On page 57 of the jury
7 instructions, under aiding and abetting, it states counts
8 four, five, and seven. And we're questioning count five. It
9 only has one defendant. Well, the way I read the indictment
10 count five charges Linda O'Connor only with a certain
11 specific act. And if the jury is considering aiding and
12 abetting and if they find Dean Sacco committed those acts,
13 the question is did Linda O'Connor aid and abet Dean Sacco?
14 My thought is no, because Dean Sacco isn't charged with
15 having done anything in count five and, therefore, can't be
16 found guilty of anything in count five, so Linda O'Connor
17 can't aid and abet Dean Sacco.

18 Government have an objection, different view?

19 MISS PEEBLES: That's our interpretation.
20 That was what we talked about.

21 THE COURT: Surprise. Surprise.

22 MR. LOVRIC: I think that's correct, Judge.
23 What I do think and this is why aiding and abetting I believe
24 was charged as to four, five, and seven, is that as to count
25 five, defendant O'Connor can be aided and abetted by another

1 in the commission of one element of count five. I mean,
2 there is no other person that could have committed count five
3 because it requires a legal parent or guardian and the
4 evidence only relates to defendant O'Connor but if defendant
5 O'Connor did not personally commit every element of count
6 five, she can still be found guilty of count five if another
7 person committed an element of count five in aiding and
8 abetting.

9 THE COURT: The law doesn't say about that,
10 does it? Please help me, that if somebody commits one
11 element of one crime, then another person who did not commit
12 that crime can aid and abet that person and be found guilty
13 because that person, meaning Dean Sacco, is only found guilty
14 of one element and the crime consists of a number of
15 elements.

16 MR. LOVRIC: Here's the scenario where I
17 believe that that does hold true, which is the jury can look
18 at count five and say -- if they say to themselves O'Connor
19 committed every element of count five except she did not take
20 the pictures but we believe Sacco took the pictures, the
21 actual photographing, can she still be convicted of count
22 five and my way of looking at it is yes, because someone
23 other than she took the pictures or intended to take the
24 photographs. If she committed the other elements of the
25 crime, that other person committing the other elements still

1 can hold her accountable for it.

2 THE COURT: I don't see that that squares at
3 all with what I told this jury about aiding and abetting
4 because I made it clear to this jury that the only way you
5 can find somebody to be an aider and abettor and, therefore,
6 liable as a principal or guilty of a crime is that you must
7 find first that some other person committed that crime and it
8 doesn't say an element of that crime or two elements or four
9 out of five.

10 MR. LOVRIC: I understand what you're saying,
11 Judge.

12 THE COURT: I think that's what it is in this
13 case. I appreciate you offering me your version and I have
14 no problem if you want to take an exception to that charge,
15 in fact, I'll give you one in advance. Really that's the way
16 I see it. Want to bring them in.

17 THE CLERK: Yes, your Honor.

18 (Jury present).

19 THE COURT: All right, ladies and gentlemen.
20 We have your next note which is now labeled Court Exhibit
21 number 5 signed by your foreperson and it reads as follows.
22 We'd like a clarification on aiding and abetting on count
23 five because there is only one defendant. On page 57 of the
24 jury instructions, under aiding and abetting it states counts
25 four, five, and seven, and we're questioning count five. It

1 only has one defendant. All right. Let's see if I can
2 answer the question I think you're posing.

3 First of all, if you find that Linda O'Connor
4 committed each and every element of that crime then you may
5 find her guilty if you find so beyond a reasonable doubt. If
6 you don't find that that happened, my understanding is that
7 Dean Sacco can't be convicted of count five because the last
8 I heard he wasn't a parent, guardian or person having custody
9 or control over Shannon. Well, if he can't commit that
10 crime, then the defendant O'Connor can't aid and abet because
11 there's no crime committed. So it's a one-shot deal against
12 Defendant O'Connor the way the Court sees it. So I don't
13 know why five got in there.

14 THE FOREPERSON: That was our question.

15 THE COURT: Is that what you guys wanted to
16 know?

17 THE FOREPERSON: Yes.

18 THE COURT: Thank you very much.

19 (Jury excused)

20 (In Chambers).

21 THE COURT: I think something that I didn't
22 fully address, as I told the jury about the analysis of
23 aiding and abetting on count five is the question of Dean
24 Sacco's liability as an aider and an abettor. It would seem
25 to me if the jury decides that Linda O'Connor, in fact, did

1 commit each and every element of count five beyond a
2 reasonable doubt, that then they can look at Dean Sacco to
3 see if he did anything that would make him an aider and
4 abettor under that theory. The problem is I was told by my
5 law clerk Seth that there is only one line on the jury
6 verdict which indicates the innocence or guilt of Linda
7 O'Connor and that there should be another line there that
8 would allow the jury to decide the question of aiding and
9 abetting on behalf of Sacco. You say no?

10 MR. LOVRIC: Yes.

11 THE COURT: Tell me why.

12 MR. LOVRIC: The grand jury did not indict
13 Mr. Sacco on count five. Count five only charges --

14 THE COURT: We know that, Miro. Was he -- he
15 wasn't even under Section 2 as to that statute?

16 MR. LOVRIC: He is not charged in count five.

17 THE COURT: We know that.

18 MR. LOVRIC: How could you have a jury ask to
19 render a verdict as to Sacco on a count that he's not charged
20 in?

21 THE COURT: As an aider and abettor.

22 MR. LOVRIC: He's not charged, Judge.

23 THE COURT: You didn't charge him?

24 MR. LOVRIC: On count five, no.

25 MR. EGAN: Take off aiding and abetting as to

1 count five.

2 MISS PEEBLES: I guess my understanding is you
3 think it applies because you think if Linda commits three of
4 the elements and Sacco can fill in the fourth, that's
5 what --

6 THE COURT: I reject that argument.

7 MR. LOVRIC: Well, I'm not going to mix
8 arguments. I'm not going to reargue that argument either but
9 I know what you said, but Dean Sacco is not charged in count
10 five.

11 THE COURT: We know that.

12 MR. LOVRIC: So he can't --

13 THE COURT: Has he been charged as an aider
14 and abettor to count five, notwithstanding he's not charged
15 in count five?

16 MR. LOVRIC: Yes, I believe that he has but
17 that doesn't answer the question as to whether or not the
18 jury needs to find anything as to him because --

19 MR. EGAN: It's just a fun exercise?

20 MR. LOVRIC: No. How is this different if
21 there's only one defendant in a case and we're claiming that
22 unindicted co-conspirator -- or an unindicted person aided
23 and abetted. You don't put the unindicted person's name in
24 the indictment to say did this -- the person committed this
25 crime. You simply put the defendant's name, give them the

1 legal charge. You find out -- you figure out whether or not
2 he aided and abetted.

3 THE COURT: Let's hold the record for a
4 minute.

5 (Discussion held off the record).

6 (Continuation of deliberations).

7 THE COURT: All right. Ladies and gentlemen,
8 we have a note from the jury labeled Court Exhibit number 6
9 and it reads as follows: We've reached a verdict. So you
10 ready to bring them in?

11 MISS PEEBLES: Yes.

12 MR. FISCHER: Yes.

13 (Jury present).

14 THE COURT: All right, ladies and gentlemen.

15 THE CLERK: Ladies and gentlemen of the jury,
16 have you agreed upon a verdict, and if so, how do you find
17 and who shall say for you. Will the foreperson please rise.

18 In the matter United States of America versus
19 Dean Sacco and Linda O'Connor, 2008-CR-77.

20 As to the crime charged in count one of the
21 indictment as to Defendant O'Connor, how do you find?

22 THE FOREPERSON: Guilty.

23 THE CLERK: So say you all?

24 (All jurors say yes).

25 THE CLERK: As to the crime charged in count

USA vs O'Connor and Sacco

2455

1 two of the indictment as to Defendant Sacco, how do you find?

2 THE FOREPERSON: Guilty.

3 THE CLERK: So say you all?

4 (All jurors say yes).

5 THE CLERK: As to the crime charged in count
6 three of the indictment, how do you find as to Defendant
7 O'Connor?

8 THE FOREPERSON: Guilty.

9 THE CLERK: So say you all?

10 (All jurors say yes).

11 THE CLERK: As to Defendant Sacco, how do you
12 find?

13 THE FOREPERSON: Guilty.

14 THE CLERK: So say you all?

15 (All jurors say yes).

16 THE CLERK: As to the crime charged in count
17 four of the indictment, how do you find as to Defendant
18 O'Connor?

19 THE FOREPERSON: Not guilty.

20 THE CLERK: So say you all?

21 (All jurors say yes).

22 THE CLERK: As to Defendant Sacco?

23 THE FOREPERSON: Guilty.

24 THE CLERK: So say you all?

25 (All jurors say yes).

USA vs O'Connor and Sacco

2456

1 THE CLERK: As to crime charged in count five
2 of the indictment as to Defendant O'Connor, how do you find?

3 THE FOREPERSON: Guilty.

4 THE CLERK: So say you all?

5 (All jurors say yes).

6 THE CLERK: As to the crime charged in count
7 six of the indictment as to Defendant Sacco, how do you find?

8 THE FOREPERSON: Guilty.

9 THE CLERK: So say you all?

10 (All jurors say yes).

11 THE CLERK: As to the crime charged in count
12 seven of the indictment, how do you find as to Defendant
13 O'Connor?

14 THE FOREPERSON: Not guilty.

15 THE CLERK: So say you all?

16 (All jurors say yes).

17 THE CLERK: As to Defendant Sacco?

18 THE FOREPERSON: Guilty.

19 THE CLERK: So say you all?

20 (All jurors say yes).

21 THE COURT: All right. Would anybody from the
22 defense side like the jury polled?

23 MISS PEEBLES: Yes, your Honor.

24 THE COURT: Okay. We'll do that.

25 THE CLERK: Juror number one, was the

USA vs O'Connor and Sacco

2457

1 verdict as reported by the foreperson your verdict?

2 JUROR NO. 1: Yes.

3 THE CLERK: Is it now your verdict?

4 JUROR NO. 1: Yes.

5 THE CLERK: Was this verdict freely and
6 voluntarily entered into by you?

7 JUROR NO. 1: Yes.

8 THE CLERK: Thank you. You may be seated.

9 Juror number two, was the
10 verdict as reported by the foreperson your verdict?

11 JUROR NO. 2: Yes.

12 THE CLERK: Is it now your verdict?

13 JUROR NO. 2: Yes.

14 THE CLERK: Was this verdict freely and
15 voluntarily entered into by you?

16 JUROR NO. 2: Yes.

17 THE CLERK: Thank you. You may be seated.

18 Juror number three, was the
19 verdict as reported by the foreperson your verdict?

20 JUROR NO. 3: Yes.

21 THE CLERK: Is it now your verdict?

22 JUROR NO. 3: Yes.

23 THE CLERK: Was this verdict freely and
24 voluntarily entered into by you?

25 JUROR NO. 3: Yes.

USA vs O'Connor and Sacco

2458

1 THE CLERK: Thank you. You may be seated.

2 Juror number four, was the

3 verdict as reported by the foreperson your verdict?

4 JUROR NO. 4: Yes.

5 THE CLERK: Is it now your verdict?

6 JUROR NO. 4: Yes.

7 THE CLERK: Was this verdict freely and

8 voluntarily entered into by you?

9 JUROR NO. 4: Yes.

10 THE CLERK: Thank you. You may be seated.

11 Juror number five, was the

12 verdict as reported by the foreperson your verdict?

13 JUROR NO. 5: Yes.

14 THE CLERK: Is it now your verdict?

15 JUROR NO. 5: Yes.

16 THE CLERK: Was this verdict freely and

17 voluntarily entered into by you?

18 JUROR NO. 5: Yes.

19 THE CLERK: Thank you. You may be seated.

20 Juror number six, was the

21 verdict as reported by the foreperson your verdict?

22 JUROR NO. 6: Yes.

23 THE CLERK: Is it now your verdict?

24 JUROR NO. 6: Yes.

25 THE CLERK: Was this verdict freely and

1 voluntarily entered into by you?

2 JUROR NO. 6: Yes.

3 THE CLERK: Thank you. You may be seated.

4 Juror number seven, was the
5 verdict as reported by the foreperson your verdict?

6 JUROR NO. 7: Yes.

7 THE CLERK: Is it now your verdict?

8 JUROR NO. 7: Yes.

9 THE CLERK: Was this verdict freely and
10 voluntarily entered into by you?

11 JUROR NO. 7: Yes.

12 THE CLERK: Thank you. You may be seated.

13 Juror number eight, was the
14 verdict as reported by the foreperson your verdict?

15 JUROR NO. 8: Yes.

16 THE CLERK: Is it now your verdict?

17 JUROR NO. 8: Yes.

18 THE CLERK: Was this verdict freely and
19 voluntarily entered into by you?

20 JUROR NO. 8: Yes.

21 THE CLERK: Thank you. You may be seated.

22 Juror number nine, was the
23 verdict as reported by the foreperson your verdict?

24 JUROR NO. 9: Yes.

25 THE CLERK: Is it now your verdict?

USA vs O'Connor and Sacco

2460

1 JUROR NO. 9: Yes.

2 THE CLERK: Was this verdict freely and
3 voluntarily entered into by you?

4 JUROR NO. 9: Yes.

5 THE CLERK: Thank you. You may be seated.

6 Juror number ten, was the
7 verdict as reported by the foreperson your verdict?

8 JUROR NO. 10: Yes.

9 THE CLERK: Is it now your verdict?

10 JUROR NO. 10: Yes.

11 THE CLERK: Was this verdict freely and
12 voluntarily entered into by you?

13 JUROR NO. 10: Yes.

14 THE CLERK: Thank you. You may be seated.

15 Juror number eleven, was the
16 verdict as reported by the foreperson your verdict?

17 JUROR NO. 11: Yes.

18 THE CLERK: Is it now your verdict?

19 JUROR NO. 11: Yes.

20 THE CLERK: Was this verdict freely and
21 voluntarily entered into by you?

22 JUROR NO. 11: Yes.

23 THE CLERK: Thank you. You may be seated.

24 Juror number twelve, was the
25 verdict as reported by the foreperson your verdict?

USA vs O'Connor and Sacco

2461

1 JUROR NO. 12: Yes.

2 THE CLERK: Is it now your verdict?

3 JUROR NO. 12: Yes.

4 THE CLERK: Was this verdict freely and
5 voluntarily entered into by you?

6 JUROR NO. 12: Yes.

7 THE CLERK: Thank you. You may be seated

8 THE COURT: Ladies and gentlemen, it's been a
9 long, arduous matter and the Court is aware that you folks
10 worked very, very hard on it. As I said earlier yesterday or
11 the day before, I guess it was now, when we let the alternate
12 jurors go, the Court noted that you paid strict attention to
13 everything put before you and I'm sure that you worked very
14 hard and there's a lot of emotional pulling and tugging and
15 various points of view and that's why a jury has to work so
16 very, very hard to reconcile all of those different points
17 that are put before you and come out with a verdict. Let me
18 tell you I'm very relieved that you came out with a verdict
19 because if you didn't, we would have had to try this all over
20 again. Can you imagine that? But in any event, we really
21 want to thank you on behalf of the parties and the attorneys.
22 They all did a good job in this case. Got a little
23 contentious as we were going along but by in large everybody
24 did their part, you people did the best part of all by
25 returning a verdict, and as I've said to other juries,

1 nothing short of serving in the military can be as important
2 to your country as what you've done here in this courtroom.

3 Now I'd ask you to retire -- wait a minute,
4 Colleen, do they have come back?

5 THE CLERK: Your Honor, we're going to
6 permanently excuse them with the thanks of the Court.

7 THE COURT: Does that mean forever?

8 THE CLERK: It means for the next two years.

9 THE COURT: Two years off. We're going to ask
10 you to go back in the jury room and I'll come back and talk
11 to you for a few minutes on various matters and we'll get you
12 out of here in 10, 15 minutes. Thank you very much.

13 (Jury excused).

14 THE COURT: Okay. Under Rule 29(c) of the
15 Federal Rules of Criminal Procedure, a motion for judgment of
16 acquittal after discharge of the jury must be made within
17 seven days after the jury is discharged or within such
18 further time as the Court may fix during the seven-day
19 period. That means you actually have to make the motion.
20 Doesn't mean you've got to give me the briefs or do anything
21 like that but even a short note to tell the Court that you're
22 making the motion will do and stop that time from running. A
23 lot of people say, well, just apply to the Judge for an
24 extension. That's not enough. Got to actually file the
25 motion.

1 Under Rule 33, motion for a new trial based on
2 the ground of newly discovered evidence may be made only
3 before or within two years of the final judgment, but if an
4 appeal is pending the Court may grant the motion only on
5 remand of the case.

6 A motion for a new trial based on any other
7 grounds shall be made within seven days after verdict or
8 finding of guilty or within such further time as the Court
9 may fix during the seven-day period. Any appeal that is
10 going to be taken in this case must be taken within ten days
11 after the entry of judgment.

12 The Court is going to set sentencing for
13 Defendant O'Connor for Tuesday, September 30 at 9:30 AM in
14 Binghamton, New York and for Defendant Sacco, Wednesday
15 October 1, at 9:30 AM in Binghamton, New York.

16 Is there anything further at this time from
17 the government or the defendants?

18 MR. LOVRIC: No, your Honor.

19 MISS PEEBLES: No.

20 MR. FISCHER: No, your Honor.

21 MR. LOVRIC: The only application I have,
22 Judge, is that the Court issue an order remanding both
23 defendants pursuant to the statute post conviction because
24 thus far they've been on pretrial detention. I would ask the
25 appropriate statute be imposed for detainment.

1 THE COURT: That's granted. So ordered.
2 They're remanded.

3 MR. FISCHER: Your Honor, with respect to the
4 forfeiture count in the indictment, is it my understanding
5 that that was going to be dismissed but I may have
6 misunderstood.

7 THE COURT: You want to talk about that in
8 chambers?

9 MR. FISCHER: I don't know that we need to.

10 THE COURT: What's the government's position?

11 MR. LOVRIC: Judge, I think I indicated that
12 previously and that the forfeiture allegation will be
13 dismissed at the time of sentencing. We no longer seek to
14 forfeit the property of Mr. Sacco because he doesn't own that
15 anymore.

16 THE COURT: That ought to work for you.

17 MR. FISCHER: Yes, sir. Thank you.

18 THE COURT: Court stands adjourned in this
19 matter.

20 (Court stands adjourned)
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C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

VICKY A. THELEMAN, RPR, CRR
United States Court Reporter
US District Court - NDNY

Dated: November 18, 2008.